

11 MARCH 1948

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Thursday, 11 March 1948

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

Appearances:

For the Tribunal, all Members sitting, with
the exception of: HONORABLE JUSTICE E. STUART
McDOUGALL, Member from the Dominion of Canada, not
sitting from 0930 to 1200.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All accused are present except
4 HIRANUMA, HIROTA, SHIRATORI, and UMEZU, who are repre-
5 sented by counsel. The Sugamo Prison surgeon certi-
6 fies that they are ill and unable to attend the trial
7 today. The certificate will be recorded and filed.

8 Mr. Blewett.

9 MR. BLEWETT: If the Tribunal please, yester-
10 day I was precluded by a ruling of the Tribunal from
11 reading in my summation, to illustrate an important
12 issue, a portion of a statement made by a high officer
13 of the United States Army regarding U. S. war prepara-
14 tions.

15 THE PRESIDENT: Because it was not a statement
16 of law but a statement of fact of which there was no
17 evidence. Therefore it could not properly be read
18 as part of the summation. There is no occasion to
19 argue it. I have stated the facts. They cannot be
20 controverted and that is the end of the matter.

21 MR. BLEWETT: If it please the Tribunal, we
22 are not without precedent, if we need it, for the in-
23 sertion of examples or illustrations not specifically
24 in evidence.
25

THE PRESIDENT: We have always protested

1 against those things. We did only yesterday afternoon
2 before your summation came on.

3 MR. BLEWETT: Selecting but one part of the
4 prosecution's summation, the introductory statement
5 of the Chief Prosecutor, we find in thirty pages four
6 quotations.

7 THE PRESIDENT: You yourself raised the ques-
8 tion whether this particular matter should be read
9 by you. You had heard what we had said about matters
10 read by Mr. Logan, and on the point raised by you we
11 gave the only possible decision, and I have just
12 repeated it. If there is anything in the Chief
13 Prosecutor's address that is not law and which is not
14 supported by evidence, we will disregard it.

15 MR. BLEWETT: I submit to the ruling, your
16 Honor. But I simply want to point out that in our
17 practice we have some latitude in arguing to a jury.
18 Despite--
19

20 THE PRESIDENT: But this is not a jury.

21 MR. BLEWETT: Well--

22 THE PRESIDENT: We suspect that at times
23 attempts have been made to use this Tribunal for
24 political and propaganda purposes, but we have en-
25 deavored to prevent that.

MR. BLEWETT: My purpose, sir, was to explain

1 the reason for my use of that portion in my summa-
2 tion that was to me an apt illustration, one of the
3 best I could find, as to the comparative activities
4 between Japan and the United States. That is what we
5 do continually before our courts at home, even our
6 appellate courts.

7 THE PRESIDENT: Our simple duty is to find
8 the facts from the evidence before us and to apply
9 the law to those facts, and a summation which goes
10 beyond that is useless to that extent. I am glad
11 you gave us the opportunity to make plain our posi-
12 tion, because things have been said in the course
13 of summation not covered by the evidence and not law.
14 Now we make plain what our position is. It has al-
15 ways been as I stated; it always will be as I stated.

16 Proceed to read the rest of your summation,
17 Mr. Blewett.

18 MR. BLEWETT: I just want to say, sir --

19 THE PRESIDENT: I will not listen to any
20 further representations on this matter. Proceed to
21 read the balance of your summation.

22 MR. BLEWETT: I think I reached page 13.
23 I start, if the Tribunal please, at the second para-
24 graph, on page 13:
25

1 Going back to the volume of Japanese mili-
2 tary armaments, let us test whether it was in ex-
3 cess of her needs, or, it may be more correct to say,
4 her minimum requirements.

5 First of all, it is well to again point out
6 that the numerical total strength of the Japanese
7 Army was always far below the armies of China and the
8 U.S.S.R. In the earlier years of the 1930's the
9 Soviet Army in the Far East had aimed at the mainten-
10 ance of three times the strength of the Kwantung Army,
11 but subsequently the increased number of her planes
12 and tanks tended to enhance further the ratio of the
13 Soviet fighting power against Japan.^{3.}

14 The prosecution harps insistently and tire-
15 lessly on the five year plans allegedly drafted by
16 the Japanese Army,⁴ in order to attempt to prove the
17 aggressive character of her armaments, notwithstand-
18 ing that the witness OKADA, Kikusaburo, who partici-
19 pated in drafting those plans, testified that the
20 Japanese authorities concerned were forced to conclude
21 that Japan also should at least endeavor to reach
22 one-half of the Soviet Union's planned production at
23 the time of the conclusion of its (Soviet) third five
24 year plan.

25 3. Tr. 23,006

 4. F-2, tr. 39,328

5
1 year plan.

2 As to the production of steel, it has been
3 disclosed that the production in the U.S.S.R. amounted
4 to 17,700,000 tons in 1937,⁶ while in Japan the demand
5 for steel by the Japanese Army four years later (1941)
6 was for 1,000,000 tons only.⁷

7 It is contended by the prosecution that
8 Japan endeavored to achieve a peacetime production
9 of at least 10,000 planes by the year 1939,⁸ but that
10 is undoubtedly a misquotation of the document; 10,000
11 planes was the desired capacity of the workshops and
12 the equipment and not the estimated annual production
13 of planes. Citing the passage in the record, it reads:

14 "(1) If an equipment capacity be maintained
15 so as to make it possible to cope with a peace-time
16 operation of 10,000 planes, the following mobiliza-
17 tion will, even in the case of a peace-time actual
18 demand of 3,000 planes, make the capacity reach close
19 to an annual production of 2,000 planes from and
20 after the 8th month, and over 2,000 planes from the
21 10th month."⁹

22
23 However, the above-mentioned figures of two
24 or three thousand planes annually were but theoretical,

25 5. Tr. 18,274-5
6. Tr. 18,274
7. Tr. 18,275

8. F-20, tr. 39,351
9. Tr. 8,375

1 based upon the barest minimum demands, and compared to
 2 some other nations a mere pittance. But not even
 3 that pitifully meagre supply was forthcoming. The
 4 actual annual production of aircraft in Japan for
 5 army purposes was:

6 1936.....522

7 1937.....745

8 1938.....1500

9 1939.....1450

10 1940.....1390

11 1941.....1380

12 If these beggarly figures be termed over-
 13 whelmingly great, and the prosecution attributes this
 14 scanty number of outmoded planes to be of the character
 15 of military preparation for aggressive wars, it has
 16 labored mightily and brought forth not even a mouse.
 17 To American counsel who represent a nation which pro-
 18 duced 50,000 planes or more in one year it is an
 19 allegation which is not ludicrous but downright tragic
 20 in a case where the lives of conscientious public
 21 officials are at stake. No one but a Don Quixote
 22 would start out to conquer the world with a handful of
 23 aircraft -- not in this day and age.

24
 25 10. Tr. 18,293.

1 With a six-year plan looking towards the
2 completion of armaments for national defense starting
3 in 1937 the Japanese Army planned the storage of oil
4 for the first time. According to this plan a mere
5 36,000 kilolitres was arranged to be stored until
6 1943.¹¹ Certainly the storage of this small quantity
7 in a country where indigenous oil production is
8 negligible does little to bolster the case of the
9 prosecution that Japan's military preparedness program
10 was aggressive.

11 From the foregoing examination of Japan's
12 preparedness program we represent that the only con-
13 clusion that can be fairly deduced is that armaments
14 during the years preceding the outbreak of the Pacific
15 War were not excessive to the point where it can be
16 maintained that they tended to be aggressive from the
17 standpoint of volume -- a test that is beyond dispute.

18 As indicated previously, we shall now approach
19 the subject of Japan's preparedness objectives from
20 the viewpoint of the quality or kind of weapons de-
21 signed to be constructed for the army. No evidence
22 has been tendered that the Japanese army had any
23 design for the manufacture of any type of long range
24 cannon, or plans to construct a class of bomber of
25 wide radius comparable to the B-29, nor has any evi-

1 dence been proffered dealing with an atom bomb.

2 On the contrary, the type of armaments which
3 were designed¹² to be supplied were rifles, light and
4 heavy machine guns, heavy tanks and ordinary airplanes,
5 all revealing none of those special characteristics
6 or functions so fundamental for purposes of aggression.

7 At this juncture, when the 5-year plan of
8 the Japanese army is considered, the defense feels
9 it obligatory to make some comment. The prosecution
10 appears to be adamant in its insistence that the fact
11 that the purpose of the 5-Year Plan was to be accom-
12 plished by the end of the 1941 fiscal year that it was
13 therefore connected closely with the outbreak of the
14 Pacific War.¹³ In the cross-examination of the wit-
15 ness OKADA, Kikusaburo,¹⁴ it endeavored to connect the
16 two, but the witness answered that the year referred
17 to in the plan meant 1942 and not 1941. Further ques-
18 tioning gave the prosecution no help. The matter can
19 be simply met.
20

21 In Japan a fiscal year begins on the 1st of
22 April and ends on 31 March the year following. This
23 is stipulated in Article I of the "Law of Account,"
24 and is very well known to all Japanese. The end of
25

12. Tr. 842, Appendix 7.

13. F-5, tr. 39,331

14. Tr. 18,331

1 the 1941 fiscal year was 31 March 1942, and not
2 December 1941. That is why the witness OKADA repeat-
3 edly answered that the plan terminated in 1942.¹⁵

4 Therefore, the final fiscal year of the plan had noth-
5 ing to do with the beginning of the Pacific War.

6 The indication that 1942 was to be the first year of
7 war in the plan shows nothing more than the theoretical
8 denomination of the hypothetical first year of war
9 according to the said five year plan.¹⁶ Really the

10 1942 fiscal year, that is, from 1 April to 31 March
11 1943 is the first year of the war, regardless of whether
12 the war happens to begin with an offensive action or
13 a defense, according to the assumption of the 5-year
14 plan. At the time of actual war in the Pacific the
15 said fiscal year had been the second year after the
16 hostilities.

17 Beyond the unalterable fact of the non-exist-
18 ence of any specially designed offensive weapon in
19 the entire Japanese national defense program, there
20 are other factors to prove that Japan did not antici-
21 pate warfare in the south western Pacific against the
22 United States and Great Britain.

23 It will be recalled that defense witness
24

25 15. Tr. 18,331-32
16. Tr. 18,330

1 NISHIURA, Susumu, who from October 1931 to August
2 1941 was in charge of the preparation of war materials
3 in the War Affairs Section, Military Affairs Bureau of
4 the War Ministry. testified without challenge that,
5 as Japan's attention had been directed to operations
6 in cold, barren regions on the continent, no war
7 materials had been prepared for use in the South Sea
8 areas.¹⁷ We represent with sincere respect that the
9 unimpeached testimony of this witness should be accord-
10 ed grave consideration by the members of the Tribunal.
11 Armies do strange things, but it is very doubtful if
12 any army, especially one cognizant of tropical con-
13 ditions, would outfit its troops with fur coats for
14 jungle warfare.

15 Defense witness YOSHINAGA, Yoshitake, who
16 from 1936 to the end of the war served at the Technologi-
17 cal Headquarters of the army, testified unqualifiedly
18 that the army's technological study had been concen-
19 trated on operations against the U.S.S.R., that is,
20 on those operational plans related to extremely cold
21 regions, and that the problem of the adaptability of
22 weapons in tropical climates did not come up for con-
23 sideration until in August 1941, when some army en-
24 gineers were dispatched to Formosa in order to conduct
25

17. Tr. 26,949 et seq.

18.
various tests there on weapons. He further testified, without contradiction, that it was late in October of the same year that the Tropical Test Chambers was established. The inference to be drawn from the testimony of these two defense witnesses is amply translucent. This evidence when supplemented with what has gone before is proof beyond even the shadow of doubt that Japan did not plan, prepare or even anticipate the war in the south.

19
In its summation the prosecution refers to the testimony of NISHIURA, and attempts to confirm its contention that only 40 per cent of the budget was devoted to the China hostilities - the balance going for expansion of armaments. But the prosecution is in error in its hypothesis as the statement of the witness does not concern the budget but explains only where the munitions and oils were kept, and by so doing added further substantial proof to the defense contention that Japan had no intention and had made no provision for a campaign in the south.

In its argument on the testimony of this witness (NISHIURA) the prosecution refrains from including Formosa and French Indo-China, the exact word-

18. Tr. 26,965

19. F-35, tr. 39,369

20
ing being:

"The distribution of ammunitions and aviation gasolines in the supplies for operations under the direct control of General Headquarters about the spring of 1941":

AMMUNITIONS

Manchuria	20%
China Republic	30%
Japan Proper	50%
Formosa and French Indo-China..	0%

AVIATION GASOLINE

Manchuria	16%
China Republic	4%
Japan Proper	80%
Formosa and French Indo-China.	0%

The statement convincingly reveals, with the additions which we have supplied, that by providing no storage of munitions in the southern part of her territory or in the southern overseas area, Japan had no conceived purpose of waging a war in the south western Pacific.

It is another matter entirely, if the question should arise at this time, whether the prosecution

1 succeeds in proving an aggressive policy on the part
2 of the Japanese Government within the period covered
3 by the Indictment, especially from the Manchurian
4 Incident down to the late fall of 1941, by citing
5 other documents or witnesses concerning Japanese ad-
6 ministrative action, all of which will be rebutted
7 by defense counsel individually; as far as the army
8 program of national preparedness is concerned there
9 is not even a scintilla of evidence in the entire
10 record to indicate that any portion of that prepara-
11 tion bears even the remotest trace of aggression.

12 The witness Liebert has been extolled by the
13 prosecution as the paragon who stigmatized the entire
14 Japanese program of national defense as aggressive.
15 He, who from his office in the agriculture department
16 in Washington, knew little of the aims of Japan during
17 a period of world industrial convulsion, nevertheless
18 calmly proceeded to cover the entire industrial evolu-
19 tion of Japan after a few months study of selected docu-
20 ments and inquiry from newly staffed governmental
21 agencies. While his opinions are ignored by the Tri-
22 bunal, and his facts have been riddled by other defense
23 counsel, we, to avoid any misunderstanding, feel it a
24 proper function to acquaint the Tribunal and the prose-
25 cution with the truth concerning the increase in

1 Japanese budget figures during the years in question.

2 In its summation,²¹ the prosecution cites
3 the figures supplied by the Japanese Finance Minister
4 concerning the Military Budget and its ratio to the
5 general Budget of Japan, challenging the credibility
6 of the figures set forth by the defense witness
7 ISHIBASHI, Tanzon. The prosecution seems to have
8 overlooked the distinction between this budget and
9 the settled account in the Japanese financial system.
10 The figures cited by the witness ISHIBASHI are also
11 those supplied by the Finance Ministry, but they are
12 not those of budget; they are those of the settled
13 account. This should be unerringly proved by the
14 words "Sources: Finance Ministry's Announcement:
15 the settled account," affixed to table 19, List of
16 the Annual Military Expenditure, which in turn is
17 cited in line 24 of the transcript (p. 25,428) and
18 line 15 of the transcript. (P. 2430). Why then does
19 there exist differences between budget figures and
20 that of settled account?
21

22 Japan adopted the system of fiscal year
23 account. Budget is only an estimate of expenses
24 expected to be needed, as everyone knows, during the
25 next fiscal year, and approved by the Diet at the

21. F-32, Tr. 39,367.

1 end of the previous year. Actual amounts of money
2 to be spent are bound to be within the limit of the
3 budget figures. In practice the amounts defrayed
4 are under that limit. The settled amounts are the
5 sums actually spent, and audited by the competent
6 authorities. Article LXXII of the old Constitution
7 stipulated:

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"The final account of the expenditures and revenue of the state shall be verified and confirmed by the Board of Audit, and shall be submitted by the Government to the Imperial Diet, together with the report of verification of the said Board."

That was the procedure to reach "settled account." The system is somewhat different from the usage of "appropriation" in England and America. It is evident that it does not make sense to cite budget figures for the purpose of trying to prove what has been the actual sum spent by any department of the Japanese Government during a given period. The figures used by the witness, ISHIBASHI, are unquestionably suitable and proper for the purpose of investigating the comparative amount defrayed for armaments purposes during the consecutive years involved.

In the foregoing we have met generally the contention of the prosecution relative to the army for alleged aggressive warfare. We shall now proceed to analyze military strategy as it may appertain to the broad program of Japan's policy of national defense to determine if in any particular it was directed at wars of aggression.

Formulating theories of a mystery-story

pattern, and having recourse to them inferentially, the prosecution has evolved what they purport to believe is an over-all operational plan formulated by the Japanese Government and the High Command for an offensive war against the United States, Great Britain and Holland.

23
In its summation, the prosecution boldly declares that prior to August 1941 Japan had a complete plan for an aggressive war against those countries. Though the document setting forth this plan, it says, is missing it is possible to reconstruct the strategic plan completely. Then, quoting the record pertaining to its evidence of table-top maneuvers, which were carried out at the Total War Research Institute in the same month of the same year, it describes what it argues is the aggressive plan of Japan including domestic policy, diplomacy and strategy.

According to its theory, the Total War Research Institute indulged in "research and study in order to test the validity of plans already formulated so that they might be perfected, and to lay the ground-work for the preparation of further plans to meet new conditions" brought about by the execution

of the first plan. That is to say, the Total War
1 Research Institute was responsible for testing the
2 first plan. Therefore, the prosecution concludes
3 snugly, the record of these table-top maneuvers,
4 being good, sound secondary evidence, indicates well
5 the contents of the first plan, which was the object
6 of the test.²⁵

7 The only trouble with this ingenious infer-
8 ence of the prosecution is that it is utterly fallac-
9 ious. Several grounds which should constitute its
10 premise are assumed dogmatically without evidence.
11

12 Firstly, the fact that the Total War Re-
13 search Institute was authorized to test the first
14 plan, which was decided secretly either by the Govern-
15 ment or by the Supreme Command, or, by both, is not
16 proved. Actually, in the Official Organization of
17 the Institute on 10 October 1940, which is quoted by
18 the prosecution, only two matters -- basic study in
19 total warfare and the education of students -- are
20 mentioned as the objects of the Institute.²⁶

21 Secondly, the prosecution did not produce
22 evidence that in the execution of the table-top
23 maneuvers in August 1941 the plan of operations and
24

25 24. Tr. 39,381-2

25 25. Tr. 39,382

26. Tr. 39,382

1 the diplomatic policy, which were in possession of
2 either the Government or the Supreme Command, were
3 shown for the maneuvers. Although there is some
4 evidence²⁷ that the Research Institute could utilize
5 secret figures regarding statistics, etc., there is
6 no evidence that the strategic or other all-over
7 secret plan decided upon by the Government or Supreme
8 Command had ever been shown to the Institute. Such
9 plans, if any, must of necessity be top secret in
10 all countries. It is beyond all imagination that
11 such confidential matters perhaps affecting a nations
12 security could be pawed over by a group of students²⁸
13 in a course of study of a semi-public nature.

14 Thirdly, if the plan prepared by either the
15 Government or the Supreme Command had actually been
16 tested in those maneuvers the results should have
17 been submitted to either the Government or the Supreme
18 Command. Nevertheless, the prosecution's witness,
19 HORIBA, testified that no such report had ever been
20 made.²⁹

21
22 In view of the above overwhelming, specific
23 evidence to the contrary it is utterly impossible to
24 assume the existence of the so-called first plan.

25 27. Tr. 3833 and 27,069
28. Tr. 8856
29. Tr. 8843

1 That such a plan ever existed is irreconcilable with
2 the facts.

3 It could be that the prosecution proceeded
4 on its theory as a result of its knowledge of the
5 Rainbow Operation and the Orange Operation in the
6 possession of the Staff of the United States Naval
7 Operations. Such an idea is plausible, and, no
8 doubt, lead the prosecution to conjecture that Japan
9 also had a similar "over all strategic plan." However,
10 there was no such plan in Japan. What had been con-
11 ceived by the Japanese High Command was only the so-
12 called "Annual Strategic Plan" against the United
13 States. Although the text of this plan was really
14 lost by fire,³⁰ defense witness TANAKA, Shinichi,
15 explained that its contents were defensive, as well
16 as negative, and that it was not so comprehensive as
17 to include matters of diplomacy, domestic policy, etc.,
18 as set forth in the record.³¹

19 In this connection it is to be recalled that
20 at the Investigation Committee of the Privy Council
21 on 26 September 1940 TOJO in answer to an interpo-
22 lation said:
23

24 "The manpower needed by our Army in a war
25 against America would be comparatively small in

1 number,"³² meaning that he replied pursuant to the
2 text of this "Annual Strategic Plan Against the
3 United States," and with that kind of a defensive
4 plan in mind. There is no other significance in the
5 answer whatsoever unless to emphasize more strongly
6 the small scale and negative nature of the plan it-
7 self.

8 Again, it is beyond belief that there exist-
9 ed in Japan two plans, the annual strategic plan and
10 a so-called "first plan," imagined by the prosecution.
11 The prosecution seems to take for granted that the
12 term "total war" is synonymous with the undefined
13 term "Aggressive war," and proceeding on this self-
14 made but erroneous hypothesis considers that it can
15 directly establish the existence of a plan for aggres-
16 sive war by presenting evidence concerning research for
17 total war. It was made abundantly clear in the light
18 of experience in World War I that when a modern war
19 breaks out among great powers, whether that war be
20 defensive or offensive, it is bound to develop into
21 total war. Consequently, and very properly so, all
22 countries valuing their existence were engaged in
23 research on total war. The only difference in this
24 respect between Japan and other countries is that
25

1 governmental and business circles, including the
2 Courts. There does not appear in substance to be
3 any great dissimilarity between that research group
4 and numerous commissions, councils and bureaus
5 formed in all countries for the same purpose after
6 the first world war. The volume of testimony intro-
7 duced here and its tenor concerning Japan's inquiry
8 of the subject seems to be entirely out of all
9 proportion to its importance. At any rate it has
10 been definitely and firmly established that the
11 institution had no voice, direction or concern with
12 the actual policies of the Government nor in any
13 military operations connected with the Supreme Com-
14 mand,³⁵ so the prosecution's summation argument,³⁶
15 that either one decided on such a comprehensive plan
16 is immoderately lacking in conviction and merit.

17 Still aggressively persistent, which we
18 admire in a prosecution however absurd its challenge
19 may be, it alleges further that a similar over-all
20 comprehensive plan had existed prior to January 1941,
21 citing exhibit 852, and stating: "although the
22 entire plan is not available, fortunately a portion
23 of the plan kept in the Ministry of Finance has been
24

25 35. Tr. 8346-8851-27,060-27,068

36. Tr. 39,377-79

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35. Tr. 8346-8851-27,060-27,068

36. Tr. 39,377-79

presented to the Tribunal." ³⁷

1 This is a record of the communication in
2 which the Chief of the Intendance Bureau of the War
3 Ministry and the Chief of the Finance Bureau of the
4 Finance Ministry discussed from around January 1941
5 regarding the printing of military notes to be used
6 in the South Seas area; it being obvious that in
7 the event of military occupation that might follow
8 a war, whether defensive or offensive, the use of
9 such currency would be indispensable. It cannot be
10 precisely inferred from the fact that responsible
11 Government officials, who were imposed with the
12 duty of anticipating every contingency, had pro-
13 ceeded with the undertaking at an early date was
14 evidence of a comprehensive aggressive plan devised
15 by the Government and the Supreme Command. The
16 Government had numerous organs, each with its own
17 particular function, not necessarily connected with
18 each other. It occurs, not infrequently, that one
19 of such organs takes a hypothetical step which is
20 incompatible with the policies of other sections of
21 a governmental organ. Therefore, from the attitude
22 of a section in dealing with its business one cannot
23 prove the existence of a general policy on the part
24 37. Tr. 39,374
25

of the Government. Defense witness YOSHIDA, Tosuke,
has testified concerning military notes to be used in
the South Seas area.³⁸ Comparing his testimony with
exhibit 3026,³⁹ it is easily recognizable that even
as late as the end of October 1941 the printing of
military currency meant nothing more than a precaution-
ary step "in the eventuality of the outbreak of war."

It has been repeatedly proved in this case,
both by defense and prosecution, that in Japan all
operational plans were to be decided by the General
Staff;⁴⁰ administrative matters by the Cabinet, and
matters involving both at the Liaison Conference or
at an Imperial Conference. In order to prove that
Japan was planning an over-all aggression during the
period from January to August 1941, as charged, one
must first of all prove that the General Staff, the
Cabinet, the Liaison Conference or the Imperial
Conference had decided upon such a plan. We submit
that the prosecution at no period in the case pre-
sented that requisite proof.

The prosecution also alleges that Japan's
plan for aggressive war dates back to 7 August 1936,⁴¹
inferring this from the "Basic Principles of National

38. Tr. 26,971
39. Tr. 26,980

40. Tr. 17,550-51
41. Tr. 39,326

Policy" adopted at the Five Minister's Conference
1 of the HIROTA Cabinet. In citing this policy, the
2 prosecution contends that the words "national defense"
3 should be read "war." That, however, would not be a
4 fair interpretation of the language used in the docu-
5 ment. In those days, as has been referred to herein,
6 and which is known universally, there was no self-
7 respecting nation in the world which did not consider
8 national defense the most urgent affair of the state.
9 If we admit this allegation of the prosecution we
10 would be compelled to brand as aggressors all the
11 independent countries of the world, amounting to more
12 than sixty. "National defense" mentioned in the "Basic
13 Principles of National Policy" was identical with
14 the case in most countries, of a purely defensive
15 character, as is clear from Paragraph 3 which reads:
16 "in order to eradicate the Soviet menace in the North
17 and at the same time to prepare against Britain and
18 America in carrying out these policies, we
19 would be careful to have friendly relations with other
20 countries." ⁴² Consequently, it is convincingly appar-
21 ent that the basic policy as formulated by reason of
22 the awareness of the actions of other countries was no
23 plan for war at all, much less an aggressive war. It
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25 42. Tr. 2727-8

1 only emphasized the mission which Japan alone was
2 willing to undertake; to guarantee peace in Asia in
3 view of the then prevailing world policy of other
4 Powers.

5 The whole sum and substance of the situation
6 is, therefore, that in examining the world condition
7 and the special circumstances in East Asia after
8 World War I the Government, the Diet and the general
9 public of Japan had since 1935 or 1936 become con-
10 scious of the necessity of strengthening national
11 defense for the sake of the self-existence of Japan,
12 as well as by reason of her responsibility to main-
13 tain peace in East Asia. But the fantastic idea that
14 these two essentials be achieved by opening a war
15 against the United States, Great Britain and the
16 Netherlands never was contemplated. Simply on its
17 face the contention is so wispy we wonder at the
18 tenacity which launched it. Assuredly it cannot be
19 seriously reflected upon in this inquiry.
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The idea of opening a war against these countries, in self-defense, however, was forced upon the minds of the Japanese people in the Fall of 1941, and not before, as the defense has proved. At that time drastic acts by these nations against Japan had spread over a long period, continually growing in intensity and apprehension until finally culminating to a point where Japan had to make a decision. The plans then conceived for the first time, as discovered by United States Army investigations, disclose that the Japanese planned a purely defensive war, and that the Army, which is charged with a long range and stupendous expansion in its southwest campaigns, carried out these operations with dangerously small forces. It is affirmed that the early conquests were accomplished by a mere thirteen divisions, 1175 land planes, 475 carrier planes, plus a handful of marines. By juggling these forces strategically Japan created the impression of much greater strength. This, with the foregoing, is indicative of Japan's hasty attempt at meeting the issue pressed upon her. The prosecution in its summation finally gives up the struggle by honestly admitting, "After November 5 (1941) full scale preparations were launched."⁴³

It is submitted that concerning these accused
43. F-50, Tr. 39,391

1 who had official responsibility for the protection and
2 existence of their nation, the proof fails completely
3 to brand them as aggressors.

4 Mr. Lazarus will continue.

5 THE PRESIDENT: Mr. Lazarus.

6 MR. LAZARUS: If the Tribunal please.

7 THE PRESIDENT: We express the hope that
8 this summation and those that follow in the individual
9 cases will be confined to the law and to the evidence
10 admitted.

11 MR. LAZARUS: Mine is exclusively on the
12 evidence, Mr. President.

13 MR. SUTTON: May it please the Tribunal, the
14 summation, which was received by the prosecution late
15 yesterday afternoon, upon a hurried examination reveals
16 that it contains therein what purports to be quotations
17 from evidence rejected and from evidence not offered.

18 THE PRESIDENT: Point out those passages to
19 Mr. Lazarus, please.

20 MR. SUTTON: Shall I point them out at this
21 time, or hand to the Tribunal a memorandum?

22 THE PRESIDENT: You may be able to point them
23 out during the first recess.

24 MR. SUTTON: None of these, if it please your
25 Honor, appear, as I recall, within the first fifty pages

of the summation.

THE PRESIDENT: Yes, Mr. Lazarus.

1 MR. LAZARUS: (Reading) Although the prosecu-
2 tion has named the accused, General HATA, Shunroku, in
3 a majority of the fifty-five counts in the Indictment,
4 the twenty months of trial have revealed a tremendous
5 variance between the charges made against this accused
6 and the actual evidence produced by the prosecution.

7 Because of this variance and because this
8 accused has been mistakenly named in some counts in
9 the Indictment, and because of our unchallenged state-
10 ment (¶. 16,319 and 16,320) that the evidence shows
11 that the wrong HATA is named in the Russian counts in
12 the Indictment instead of Hikosaburo HATA, who was
13 Chief of Staff of the Kwantung Army when that Army was
14 taken prisoner by the Russians, and which HATA was not
15 produced here although the Tribunal issued a subpoena
16 for him at our request, we must look elsewhere than
17 the Indictment and the evidence itself to determine
18 what the prosecution claims, so that we may make an
19 intelligent summation to assist the Tribunal in its
20 deliberations. We shall, therefore, as we did in
21 General HATA's individual defense, look to the prosecu-
22 tion's answer to our motion for dismissal, wherein the
23 prosecution sets forth its claims as to what it had
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1 proven in its case-in-chief against HATA, and we will
2 show the Tribunal that we have met and have completely
3 overcome all issues raised by the prosecution against
4 this accused.

5 Mr. Comyns-Carr's answer to our motion for
6 dismissal (pages 16,826 to 16,832 of the Record) sets
7 out fully all the evidence which, the prosecution con-
8 tends, applies to the accused HATA. A reading of these
9 pages reveals the amazing fact that in only three places
10 in all these pages does the prosecution state that HATA
11 himself took any action or any part in the matters
12 therein set forth. Throughout the pages it can be seen
13 that the alleged evidence against the accused HATA is a
14 recitation of actions done by others, events in which
15 it is not contended that HATA took part.

16 Relying on the sound law enunciated by the
17 President during these proceedings, that unless the
18 accused himself were connected by evidence in some
19 manner with the actions taken by others in the government
20 while he was a member of that government the Court would
21 not hold the accused responsible for such actions, we
22 will not take up the time of this Tribunal by answering
23 all the far-fetched evidence with which the prosecution
24 in these pages has sought to connect the accused HATA.
25 We, therefore, will address ourselves only to those

1 matters which the prosecution itself has claimed direct-
2 ly involve the accused by his own acts.

3 General HATA is accused of having participated
4 in the overall aggression of Japan in three different
5 ways. (1) That he carried on aggressive war in China at
6 two different periods of time as commander of various
7 armies in China; (2) As Minister of War in the ABE
8 and YONAI Cabinets, he helped determine the national
9 policy and worked on plans and preparations for aggress-
10 ive war during that period; and (3) That he was one of
11 the prime movers in the overthrow of the YONAI Cabinet,
12 thus giving new direction and expansion to the entire
13 conspiracy. Lastly, the accused is charged with respons-
14 ibility for the alleged atrocities committed by Japanese
15 soldiers in China during the times that he commanded the
16 several armies in China. This is the sum total of the
17 evidence the prosecution alleges it has adduced against
18 the accused HATA and we will now show, point by point,
19 that the prosecution has completely and totally failed
20 to prove these allegations.

21 Point 1. "That he carried on aggressive war
22 in China at two different periods of time as commander
23 of various armies in China." From his personal record,
24 the Tribunal, of course, knows the accused HATA has been
25 a life-long soldier. Once his country became involved

1 in a war, it was absolutely beyond his province to seek
2 first to determine the nature of the war before serving
3 his country as a soldier. This Tribunal is well aware
4 of the prison terms meted out in allied countries to
5 conscientious objectors, members of certain religious
6 sects, whose tenets forbid them to bear arms even in
7 defense of their own country. How much stronger, then,
8 is the duty imposed on a man who has been trained and
9 supported all his life by his country for just that
10 occasion -- the outbreak of war. Nowhere in all the
11 recorded history of man and what is more important to
12 us, in the long record of this Tribunal, has it any-
13 where been suggested that the profession of arms is
14 dishonorable or that a life-long soldier must first
15 determine whether the war in which his country is engaged
16 is an aggressive war or not, for fear that should his
17 country lose the war, he will then be accused of, and
18 tried for, carrying on aggressive war as commander of
19 an army. And the duty to fight without question is no
20 less strictly imposed on a man who because of education
21 and ability holds high rank in his country's armed forces
22 than on the civilian who is drafted to fight. Nowhere
23 in the constitution of any country is there a provision
24 that each individual may determine for himself whether
25 or not he will support his country's war effort.

1 We are still speaking now of the first point
2 that HATA "carried on aggressive warfare in China at
3 two different periods of time as commander of various
4 armies in China." We shall take up and answer later
5 the second point, with reference to his actions as War
6 Minister. The Record shows (exhibit 102) that at the
7 outbreak of the China Incident on 7 July 1937 the
8 accused HATA was commander of the Japanese Army Unit
9 on Taiwan (Island of Formosa). That exhibit shows HATA
10 had held that position for a year prior to the outbreak
11 of the Incident, hence could have had no connection of
12 any nature whatsoever with the outbreak of the affair.
13 As Mr. Comvns-Carr says (T. 16,826-7) as he begins to
14 outline the prosecution's position with reference to
15 HATA, "After serving for many years in the army, the
16 accused at the time of the outbreak of the Marco Polo
17 Bridge Incident was Commander of the Formosan Army."
18 Thus, the prosecution openly admits that although HATA
19 is named in Counts dating back to 1928, their evidence
20 against him does not begin until late in August 1937,
21 some seven weeks after the outbreak of the China
22 Incident, when he left his Formosa post and went to
23 Tokyo to become Inspector General of Military Education
24 (exhibit 102). That is HATA's first position of impor-
25 tance in the Japanese Army and, we stress again, was

1 not assumed until seven weeks after the beginning of
2 the China affair. The prosecution clearly, it seems
3 to us, absolves HATA of any connection with the beginning
4 or planning of the China Incident, since no evidence was
5 introduced to show HATA, while holding his position for
6 a year before the Incident's outbreak in Formosa, had
7 attended any conferences or councils, belonged to any
8 party, group or clique of politicians or officers who
9 advocated action in China. This is especially clear
10 since in the very next sentence to the one above quoted
11 with which he opened his outline of evidence against
12 HATA, Mr. Comyns-Carr states (T. 16,827), "In August
13 1937, shortly after the outbreak, he was recalled to
14 Tokyo to become Inspector-General of Military Education
15 ..." HATA held this post for less than six months,
16 for on 17 February 1938, he relieved the accused MATSUI
17 in China, this being the first of his two tours of duty
18 as a commander in China.
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1 Mr. Carr goes on to state that because of his
2 becoming Inspector-General of Military Education
3 seven weeks after the beginning of the China Incident
4 the accused HATA, by being the Inspector-General of
5 Military Education, was one of the Three Chiefs who
6 nominate the new War Minister whenever there is a
7 cabinet change, was "at the very outset of the China
8 Incident in a strong strategic position to affect
9 policy." The fact that he was in a position to have
10 done so is true, but the inference that he did or that
11 merely by being in the position of Inspector-General
12 of Military Education he could affect policy is abso-
13 lutely false. We will not go into the function of the
14 position of Inspector-General of Military Education,
15 but relying on the Tribunal's knowledge of that posi-
16 tion which has been thoroughly explained time again
17 in this long trial, we point out only that the
18 Inspector-General can exercise influence only in
19 nominating a new War Minister in the event of a change
20 of cabinets. And the record shows there was no cabinet
21 change in the period between late August 1937 when
22 HATA assumed the post and 17 February 1939 when HATA
23 relieved MATSUI in China.
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25 To summarize: By the prosecution's own
statement and its own exhibit (102) the accused HATA

1 neither did, nor was he in a position to plan, pre-
2 pare, initiate or wage a war of aggression against
3 China. We do not, since the above statement is true,
4 argue here the merits of the China War as a war of
5 aggression or a war of self-defense against the
6 spreading Communist menace. General HATA simply was
7 not involved in it at its inception, by reason of
8 his being on a far-off island at the outbreak, nor
9 did he, by becoming Inspector-General of Military
10 Education after the outbreak, have anything to do with
11 policy, since he had no opportunity to help nominate
12 a new War Minister who may or may not have continued
13 on the course already embarked upon by the Japanese
14 Government when HATA came to Tokyo on 26 August 1937.
15 The prosecution's position then, boils down to this:
16 HATA, it is charged, "Carried on aggressive warfare
17 in China at two different periods of time as commander
18 of various armies in China" simply because he was a
19 life-long soldier and he happened to be of high enough
20 rank, after war broke out, to command an army. That,
21 then, is his sin. The war was not of his doing, he
22 was in no position to stop it once it broke out, but
23 he did fight in it for his country. He didn't vol-
24 unteer, but neither did he refuse to fight and resign
25 his commission in order not to have to fight. Is that,

1 then, the price that the prosecution would demand of
2 a man who had chosen the profession of arms for his
3 life's work? Do the Allied prosecution and the
4 countries represented here, my own included, seek, by
5 levelling such a charge at a professional soldier, to
6 state as the law of these countries that a man who
7 fights for his country when he is called upon to do
8 so because of his membership in the honorable profes-
9 sion of arms, must, if he was born in a country
10 destined to lose the war, face the charge by his
11 victorious opponents that he "carried on aggressive
12 warfare" and be put on trial for his life? Nothing
13 in the Potsdam Declaration, nothing in any of the
14 League of Nations Conventions, nothing in the Treaties,
15 nothing in International Law, nothing in the Charter
16 of the Tribunal, even hint of such a possibility. We
17 rest at ease with the Tribunal's judgment on this
18 charge.

19 Point 2. Quote: "As Minister of War from
20 August 30, 1939, to July 22, 1940, he helped determine
21 the national policy and worked on the plans and prepar-
22 ations for aggressive war during that period." This
23 second point is divided obviously into two parts,
24 the first being the determination of the national
25 policy, and the second being the planning and preparing

1 for an aggressive war in the future. As the Tribunal
2 has heard from other accused who have held the position
3 of War Minister, namely Generals ARAKI and MINAMI, the
4 War Minister did not create or determine national
5 policy. National policy with reference to the China
6 Incident had already been determined and laid down by
7 the First KONOYE Cabinet during the life of which the
8 China Affair had broken out. From the few thousands
9 of Japanese troops present in China when the Incident
10 began, the Japanese Army in China had grown to 900,000
11 when HATA became War Minister. No War Minister who
12 had preceded HATA had cut down or had even tried to
13 cut down the size of the Japanese forces in China.
14 Always, because of the circumstances, the number of
15 Japanese troops had continued to grow. As Brigadier
16 Nolan stated in his explanation to the Tribunal of
17 the position of the War Minister (589), "Briefly one
18 might say that the Minister of War administers. . ."
19 We are speaking, the Tribunal of course realizes, of
20 the days before the Second KONOYE Cabinet and sub-
21 sequent cabinets, when the War Minister was still not
22 a powerful figure politically and, as General ARAKI
23 and MINAMI have testified, and as Brigadier Nolan
24 tells us, the War Minister merely administered and
25 carried out the policies of the cabinet. In the

1 free of this, General HATA was the first War Minister
2 to take positive steps to bring an end to the China
3 Incident by actually beginning negotiations with
4 Chiang Kai-shek for the termination of the Incident
5 by making the previously unheard of Japanese conces-
6 sion of offering to withdraw all Japanese troops
7 from China.

8 Still taking the bull by the horns and deter-
9 mining national policy, according to his own views for
10 the quick settlement of the China Incident, and break-
11 ing away from the former national policy which had
12 permitted the growth of the Japanese Army to 900,000
13 men in China, he backed up his negotiations with
14 Chiang Kai-shek with a show of good faith by reducing,
15 when he presented his first army budget as War Minister,
16 the Japanese strength in China to 500,000 men. Because
17 of the strenuous objections by the General Staff to
18 any such wholesale slash in Japanese strength in
19 China, the figure was finally set at 600,000. This,
20 then, is an example of the way General HATA, as War
21 Minister "helped determine the national policy and
22 worked on the plans and preparations for aggressive
23 war during that period." But before we go further
24 into his actions as War Minister, let us examine the
25 prosecution's evidence "that as Minister of War from

1 August 30, 1939, to July 22, 1940, he helped determine
2 national policy and worked on the plans and prepara-
3 tions for aggressive war during that period."

4 First, it is claimed (16,827-28) that "during
5 his administration several of the important acts
6 involving furtherance of the conspiracy were carried
7 out. Certain industries such as the Cast Iron
8 Manufacturing Facilities Industry were brought under
9 control (record page 8,327; 8,403; 8,299)." An
10 examination of these pages of the record reveals that
11 this evidence is to be found in the testimony of the
12 alleged economic expert Liebert. Two of these three
13 acts involved the Ministry of Commerce and Industry
14 and one involved the War and Navy Ministries. Taking
15 them in numerical order, the first (8,299) it turns
16 out, is the Coal Distribution Law. This Law was
17 exercised through the Commerce and Industry Ministry.
18 The next (8,327) is the Cast Iron Manufacturing
19 Facilities Restricting Regulation of September 23,
20 1939, Commerce and Industry Department. The last one
21 (8,403) shows that pursuant to the already existing
22 General Mobilization Law, Imperial Ordinance 901 of
23 28 December 1939 was promulgated. It was called
24 "Use and Expropriation Ordinance of Factories and
25 Workshops." Under it "the War and Navy Ministries

1 were given authority to authorize expropriation of
2 land, buildings, materials, etc." There is no
3 evidence whatsoever that HATA had this ordinance
4 promulgated or that he ever used it. In fact, there
5 is no evidence that he had anything to do with any
6 of these three regulations or that he ever knew about
7 their existence.
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1 We next learn that "On October 12, 1939, the
2 accused appointed MUTO as Chief of the highly important
3 Military Affairs Bureau in the War Ministry . . ."

4 Presumably because MUTO is also an accused in this
5 trial this appointment constitutes some heinous act.
6 That there was nothing unusual or extraordinary or con-
7 spiratorial about this action is shown by the evidence
8 of the witness INUMA, Mamoru, (28997) who states:

9 "In September 1939, I recommended Major
10 General MUTO as Chief of Military Affairs
11 Bureau to General HATA who was then the War
12 Minister, as the proper person to be appointed
13 to that position. I made this recommendation
14 in accordance with my duties as Chief of the
15 Personnel Affairs Bureau. It is the duty of
16 the Chief of the Personnel Affairs Bureau to
17 make recommendations to the War Minister for
18 the appointment of officers to the various
19 positions in the army. I made this recom-
20 mendation after Lieutenant General MACHIJIRI,
21 the outgoing Chief of the Military Bureau
22 had recommended General MUTO as his success-
23 sor and, after I, myself, had fully consid-
24 ered the opinions of the Military Affairs
25 Bureau. In accordance with the regular

1 military procedure in such matters, War
2 Minister HATA then submitted the name of
3 Major General MUTO to the Three Chiefs'
4 Council. Major General MUTO was then desig-
5 nated to the position as Chief of the Mili-
6 tary Affairs Bureau by the Three Chiefs'
7 Council.

8 "General HATA always followed regu-
9 lar military procedure in all matters affect-
10 ing the War Ministry and he accepted my recom-
11 mendation of General MUTO without question and
12 did his duty and submitted his name to the Three
13 Chiefs' Conference. My recommendation of
14 Major General MUTO, General HATA's acceptance
15 of that recommendation, and his presentation of
16 General MUTO to the Three Chiefs' Conference,
17 and the acceptance by the Three Chiefs' Con-
18 ference of the recommendation of General MUTO
19 were all in accordance with regular procedure
20 in such matters in the War Ministry."
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22 There is no evidence of any nature whatsoever
23 that General MUTO was not a proper person to be ap-
24 pointed to such a position. There is no evidence that
25 General MUTO was engaged in any conspiracy for world
conquest at this time. In short, there is no evidence

1 that General HATA, when he nominated General MUTO
2 was furthering any conspiracy or was determining
3 national policy in any wrongful direction by nominating
4 General MUTO after General MUTO had been recommended
5 to General HATA in the normal, usual routine practiced
6 by the Japanese Army in such matters. Whatever the
7 prosecution may see fit to charge against General MUTO
8 later, after General MUTO assumed this position, can
9 certainly not be held against the accused HATA for,
10 as it is already stated, there is no evidence that
11 General MUTO's political conduct before this appoint-
12 ment had been anything but above reproach.

13 Next, Mr. Comyns Carr points out that "In
14 November, Imperial General Headquarters, which had
15 never been established heretofore, except in case of
16 war, was set up (Exhibit 80)." We omit the rest of
17 this paragraph because we have discovered that this
18 prosecution evidence is incorrect. It is really 1937,
19 November instead of 1939, November and not during HATA's
20 time.

21 Next comes: "During the ABE Cabinet of 1939,
22 pressure was put on France to give Japan special
23 rights in French Indo-China (Exhibits 616-A, 618-A).
24 Shortly after the YONAI Cabinet was formed on January 16,
25 1940, pressure was put on the Netherlands for special

rights in the Dutch East Indies (Exhibit 309-A)". Let
1 us examine these exhibits for any connection with the
2 accused HATA. Exhibit 616-A it turns out, is an ex-
3 cerpt from "Business Report of 1939 published by the
4 Board of South Seas, 1941" and is nothing but a review
5 by some unknown author or authors of the course of
6 the China Affair and France-Japanese diplomatic rela-
7 tions over Indo-China. Nowhere does the name of Gen-
8 eral HATA appear, and the conclusion that "pressure
9 was put on France to give Japan special rights in
10 Indo-China" is unwarranted as to him. At all events,
11 HATA is not even remotely connected with this exhibit.
12 Exhibit 618-A is an excerpt from the same source, and,
13 again, nowhere does it appear that HATA is remotely
14 connected. Exhibit No. 1309-A is a book written by
15 Hubertus J. Van Mook and published by Norton Company
16 in New York. This book is the author's review of
17 Japanese-Dutch East Indies relations over the past
18 years and in no wise is General HATA mentioned or even
19 remotely connected with such relations either directly
20 or indirectly. I need hardly remind the Tribunal of
21 the action it took whenever the defense sought to intro-
22 duce excerpts from books similar to the ones from which
23 these three excerpts were taken, and the comments the
24 Tribunal made as to the value of such testimony, even
25

1 if it should be accepted.

2 Next, we learn that "on February 16, the Mili-
3 tary Mission at Harbin drew up a plan for establishing
4 a Far Eastern Anti-Comintern to unite sabotage activities
5 against the Soviet Union (Exhibit 736)." Examination
6 of the certificate of this exhibit reveals that this
7 exhibit, the original of which is in the archives in
8 Moscow, purports to be an excerpt from "the conference
9 of chiefs of army organs in Northern Manchuria," and
10 the exhibit itself shows that it is by the Army
11 Special Service Organization at Harbin. Nowhere is
12 the name of HATA mentioned, nor is it stated that
13 his office approved of, or took part in this discussion,
14 nor that his office was in any wise connected with it.
15 Moreover, the Tribunal well knows that overseas units
16 do not come under the control of the War Minister,
17 but are directed in their operation by the General
18 Staff and still further that the Kwantung Army in
19 whose territory this plan was drawn up, is an auton-
20 omous unit and is in no wise under the control of the War
21 Minister.
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23 THE PRESIDENT: Well, we will recess now for
24 fifteen minutes.

25 (Whereupon, at 1045, a recess was taken
until 1100, after which the proceedings were

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resumed as follows:)

1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Lazarus, I reported to my
4 colleagues that you, Mr. Tavenner, and Mr. Sutton saw
5 me in my chambers during the recess, and that you con-
6 tended that you were entitled to read on your summation
7 evidence that had been expressly rejected by the Court
8 simply because it appears in the document tendered for
9 identification only. The Tribunal have decided to
10 prevent you -- they have unanimously decided to prevent
11 you from reading any such evidence so rejected.
12

13 MR. LAZARUS: How about the portions, if the
14 Tribunal please, that had never been offered in evidence
15 and not rejected?

16 THE PRESIDENT: The Tribunal are unanimously
17 of opinion that you cannot read on your summation any-
18 thing that has not been admitted in evidence, whether
19 tendered for identification or not. That, of course,
20 applies to all summations, and so far as necessary that
21 warning extends to all counsel reading their summations.
22 I do not think it will be necessary in many cases, if in
23 any cases.
24

25 MR. LAZARUS: I now continue reading from the
bottom of page 17.

1 Next, we learn that "During this adminis-
2 tration the economic policy for relieving Japan of
3 its dependency on the United States for military goods
4 necessary to carrying out the divine war was adopted
5 (exhibit 1007)." The very first sentence of the
6 exhibit shows that it speaks of "economic policy which
7 should be taken in connection with diplomacy towards
8 U. S. A." The exhibit does not state that this
9 policy was adopted, and no where is there mention
10 of a "divine war." More important to the individual
11 case of General HATA, the name of General HATA no where
12 appears in the exhibit, nor is it even hinted that he
13 or his office are connected with the proposed economic
14 policy either directly, or indirectly.

15 Continuing, we next see that "During the
16 same month of March, the program of the Kwantung Army
17 for aggression against the Soviet was sanctioned
18 (exhibit 705)." Examination of this exhibit reveals
19 that it is the affidavit of Lieutenant-General
20 TOMINAGA, Kyoji, a prisoner of war of the Soviet Union.
21 On page 5 of this exhibit we see that the plan was
22 sanctioned in March of 1940 and that the plan was
23 reported to Prince KANIN, the Chief of the General
24 Staff Headquarters, who in turn reported it to the
25 Emperor. These are the only two people to whom the

1 plan was reported. Obviously, then, if the plan were
2 reported only the KANIN and to the Emperor, HATA and
3 the War Ministry could have known nothing about it,
4 could have had no connection with it whatsoever, and
5 could certainly have no responsibility for it. It
6 is again stated to the Tribunal that the Kwantung
7 Army, being an overseas unit worked only through
8 General Headquarters as the evidence has shown, and
9 not through the War Ministry. Of Prince KANIN, the
10 Chief of the General Staff, and his forcing HATA to
11 resign as War Minister, because of his, HATA's oppo-
12 sition to the Tripartite Pact, we shall have more to
13 say later.

14 The next time (16,829) shows that "on March
15 30 the puppet Central Government of Wang Ching Wei at
16 Nanking was established (exhibit 276A)." The exhibit
17 turns out to be a two-line excerpt from the Japan Year
18 Book 1941-42, page 1000, making note of the establish-
19 ment of the Central Government. As in all previous
20 exhibits, no mention of the accused HATA is made, nor
21 is there a hint or a suggestion that HATA was in any-
22 wise connected with this event.

23
24 We next learn that "severer regulations were
25 put into effect by the War Ministry with respect to

military training in schools (exhibit 137)." The exhibit shows that this was a War Ministry ordinance and, of course, was issued in the name of the then War Minister, General HATA. However, instead of the exhibit's showing that severer regulations were put into effect with respect to military training in schools, the very first sentence of the exhibit says "the following revision will be made in the regulation regarding the inspection of Military Training Course in the Youth School." And, indeed, a reading of the exhibit reveals it to be just that and only that. How Mr. Carr ever came to conclude that this exhibit revealed "severer regulations with respect of military training in schools," we do not know.

We next find that "the accused attended the Four Minister's Conference of June 18, 1940, which decided to make certain requests upon France, and in the event of refusal to use force (exhibit 619). Following this a further program of pressure was put into effect against France (exhibit 615A, 618A)." Examination of the first exhibit (619) reveals that this is an excerpt from KIDO's diary. KIDO had a talk with the Foreign Minister and he discussed the two plans which were debated at the previous day's Four Ministers' Conference. The value of such evidence gleaned

1 second-hand about matters discussed on the previous
2 day, we leave to this Tribunal. It shows that two
3 plans were considered: One, "that a request be sub-
4 mitted regarding the pro-Chiang acts, and in case the
5 request is refused by the French, that force be
6 employed"; and the second, "that force be employed
7 from the beginning on the idea that negotiation is
8 unnecessary." The decision was that the military
9 ministers wanted the first plan to be adopted. The
10 Tribunal, of course, is well aware, that no action was
11 taken with reference to Indo-China during the YONAI
12 Cabinet's life. Subsequent negotiations and the
13 landing of troops in Indo-China took place during the
14 Second KONOYE Cabinet when the accused HATA was no
15 longer in the government. Exhibit 615A is an excerpt
16 from the Tokyo Gazette and is issued by the Bureau
17 of Information, Department of Foreign Affairs. We
18 again respectfully remind the Tribunal of the position
19 it took when the defense sought to introduce what were
20 termed "hand-outs" of this nature and its remarks as
21 to their value as evidence. Further, nowhere does it
22 appear that General HATA, either directly or indirectly,
23 had anything to do or was in anywise connected with
24 the diplomatic negotiations and representations alluded
25 to in this excerpt. Of exhibit 618A, we have spoken

before.

1 Next, we find that "in March 1940, the
2 accused, as War Minister, made it clear that Japan's
3 progress would not be stopped by the Nine-Power Treaty
4 (exhibit 914)." This exhibit it turns out, is a
5 report by Ambassador Ott to the German Foreign Office
6 on the "report of strong words by the spokesman of
7 the army in the Diet that Japan's progress in China
8 cannot be stopped by the obsolete Nine-Power Treaty."

9 The last exhibits (527 and 528) referred to
10 by the prosecution under point 2 (16829) are minutes
11 of a joint conference at the Foreign Ministry among
12 War, Navy, and Foreign Office officials discussing
13 the possible aspects of a Tripartite Pact. No decision
14 is made, all aspects are explored in interminable talk.
15 This is no more than government discussion of one of
16 the leading issues of the day by the permanent members
17 of these ministries. That it is not on a high policy
18 level is seen by the fact that the War Ministry is
19 represented by a lieutenant-colonel and the General
20 Staff by a major. A reading of the documents shows
21 that they intended to place their thoughts on the
22 subject before their superiors later. Nowhere is the
23 name of HATA or the War Minister mentioned. It is
24 not even suggested that he knew about, sanctioned,
25

1 agreed with or took part directly or indirectly in
2 the talks. About HATA's stand on the Tripartite Pact,
3 we'll discuss under the prosecution's point 3, that
4 HATA was "one of the prime movers in the overthrow of
5 the YONAI Cabinet." With reference to these exhibits
6 we again respectfully refer to the President's state-
7 ments that unless an accused is himself connected with
8 an exhibit, the Tribunal will not hold him responsible
9 for actions taken by the government of which he is a
10 member, when it is not shown he knew of the actions
11 or that he took part in them. Further, these two joint
12 conferences took place on 12 and 16 July, 1940, and on
13 the very next page (16830), Mr. Carr tells us that War
14 Minister HATA "On 16th July submitted his resigna-
15 tion. . ." It is impossible, therefore, that HATA
16 could have been involved in the 16 July meeting, which
17 was a continuation of the study begun 12 July. The
18 Tribunal will also note, the minutes of these studies
19 were found, according to the certificates attached to
20 the exhibits, in the Foreign Ministry, not the War
21 Ministry.
22

23 This, then, is the sum total of all the
24 evidence the prosecution has introduced and which it
25 claims proves HATA "helped determine the national
policy and worked on the plans and preparations for

1 aggressive war during that period" while he was War
2 Minister. Not one single act of his own is shown.
3 It all consists of what others said and did and there
4 is no evidence there involving HATA or his office.
5 Now let us examine the record and see what HATA did
6 do while in office and let us see if he "worked on
7 plans and preparations for aggressive war during that
8 period." The evidence on HATA's behalf began on
9 September 19, 1947 (28853). The first witness to
10 give testimony concerning HATA's actions as War
11 Minister was former Premier Admiral YONAI. Before
12 going into the actions of HATA as War Minister in
13 the Yonai Cabinet, it is well to note what YONAI,
14 whose cabinet, as well as YONAI himself, were so
15 highly praised by Mr. Keenan when the Chief Prosecutor
16 was cross-examined the accused KIDO, has to say with
17 reference to the China Incident and HATA's lack of
18 connection with it. (28917).

19 Quote: "When the Incident of the Marco Polo
20 Bridge broke out on 7 July 1937, I was the Navy
21 Minister in the First KONOYE Cabinet. Just at this
22 time, General HATA was the Commander-in-Chief of the
23 Japanese Forces on the Island of Formosa (Taiwan) and,
24 it is needless to say, that neither the forces in
25 Formosa, nor General HATA had any connection with this

1 incident, either in its beginning or later. It was
2 not until February 1938 that General HATA first went
3 to China when he was appointed Commander-in-Chief of
4 the Japanese Forces in Central China."

5 With reference to the Tripartite Pact, during
6 the life of this cabinet, YONAI says (28917):

7 "During the period from January 16, 1940
8 to July 21, 1940, when I was the Prime Minister,
9 General HATA, Shunroku was the War Minister at the
10 time. With respect to the Tripartite Pact with the
11 Axis countries, my cabinet was completely opposed to
12 it and for this reason this question did not even once
13 come up in our cabinet conferences."

14 On the next page (28918) YONAI states:

15 "Coming to this question and to General HATA
16 who was my War Minister, he earnestly cooperated with
17 my cabinet's policy and, of course, naturally was op-
18 posed to the pact."

19 Next, the defense produced the witness
20 ARITA, Hachiro, the Foreign Minister in the YONAI
21 Cabinet, and he states (28945):

22 "The YONAI Cabinet was opposed to the Tri-
23 partite Pact because we were opposed to any entangle-
24 ments with Germany. Such being the case, the Tripartite
25 Pact was never during the life of the YONAI Cabinet put

1 on the agenda for discussion by the ministers of the
2 cabinet.

3 "General HATA was the War Minister in the
4 YONAI Cabinet and throughout his tenure of office
5 he was in full accord with the policy of the cabinet
6 and cooperated fully with it. In fact, I knew General
7 HATA opposed the Tripartite Pact from the days it
8 was being first discussed in Japan. When I was
9 Foreign Minister in the HIRANUMA Cabinet, I had occasion
10 to have an audience with the Emperor. While waiting
11 to be received, I met General HATA, who was then
12 aide-de-camp to His Majesty. We conversed informally
13 and the subject of the Tripartite Pact came up. General
14 HATA stated it appeared the Emperor objected to the
15 proposed Pact and that he himself was strongly opposed
16 to it. He made it clear to me that beside his personal
17 opposition to any alliance with the Germans, he also
18 opposed the pact on the grounds that he could see no
19 benefit to Japan in signing a pact that would work
20 against the interests of our country and which would
21 antagonize the Anglo-Saxon countries."
22
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Here then are the two most important members
1 of the cabinet, the Prime Minister himself and the
2 Foreign Minister, and they both state that HATA joined
3 the rest of the cabinet in opposing the Tripartite
4 Pact. The subject of the pact never came up for dis-
5 cussion by the ministers, and the lower level dis-
6 cussions revealed in the previously-mentioned prosecu-
7 tion exhibits 527 and 528 never reached the high level
8 of discussion by the ministers in the YONAI Cabinet.
9 Throughout the prosecution's case in chief, and during
10 Mr. Keenan's above-mentioned cross-examination of
11 KIDO, the YONAI-ARITA Cabinet and its policies were
12 held up to the Tribunal as conservative, anti-war, and
13 anti-Tripartite Pact. In fact, Mr. Tavenner in his
14 lengthy opening address, in the prosecution's presen-
15 tation of its Tripartite phase, praises the YONAI-
16 ARITA Cabinet and its pro-Anglo-American policy.
17 Mr. Tavenner stated (5,860), "In opposition to the YONAI-
18 ARITA government's effort to reach an agreement with
19 Britain and America, Germany endeavored to excite
20 Japan's feeling toward America . . ." The YONAI and
21 ARITA referred to by Mr. Tavenner are the same YONAI
22 and ARITA who came forward in HATA's individual defense
23 to state as just quoted above from their affidavits that
24 HATA agreed with their policies and agreed fully with
25

their cabinet and that its policy was not pro-German.

1 Mr. Tavenner again repeats by stating on the same page,
2 ". . . the German Ambassador to Japan recommended to
3 his government the annexation of French-Indo China
4 by Japan on the grounds that it would increase the
5 chance for an early end of the China conflict, that
6 it would intensify the differences between Japan and
7 the Anglo-Saxon powers to such an extent that the
8 danger of agreement would be eliminated for a long time
9 and that it would result in a severe blow to the YONAI
10 Cabinet, and probably bring its replacement by a more
11 pro-German cabinet if the government should fail to act
12 in this matter."
13

14 Mr. Keenan, Chief of Counsel, revealed the
15 prosecution's evaluation of Admiral YONAI and the
16 YONAI Cabinet during his cross-examination of the
17 accused KIDO, as follows: (p. 31556)
18

19 "Q YONAI opposed the military alliance with
20 Germany and Italy?

21 "Q Don't you know that YONAI emphatically
22 opposed military alliance with Germany, Italy, and
23 Japan?

24 "Q YONAI was known to you to be an exceed-
25 ingly strong and even stubborn man, isn't that true?"

And on another day, Mr. Keenan, still

1 cross-examining the accused KIDO, and revealing the
2 prosecution's high estimate of YONAI and the YONAI
3 Cabinet, asked this question: (p. 31,351)

4 "Q I will remind you that you were Lord Keeper
5 of the Privy Seal at the time of the fall of the YONAI
6 Cabinet. The YONAI Cabinet was well known by you and
7 others to be a cabinet devoted to peace, is that not
8 true?

9 "Q . . . It was against the Tripartite -- It
10 was against an alliance with Germany?"

11 We offer these quotes from Mr. Tavenner's
12 opening address on the prosecution's Tripartite phase
13 and from the cross-examination by the Chief of Counsel
14 to make amply clear what the prosecution's position
15 on YONAI and the YONAI Cabinet has been throughout
16 the trial. This, then, is the YONAI praised so highly
17 by the prosecution, who testified for HATA before this
18 Tribunal and who stubbornly and steadfastly insisted
19 that HATA had supported his policies and the policies
20 of his cabinet. These policies, as shown by the above
21 quotes, were pro-Anglo-American and anti-Tripartite
22 Pact. The prosecution had failed to produce as a wit-
23 ness before the Tribunal this man who had been a key
24 figure during this critical time in Japanese political
25 history. His testimony, on behalf of HATA, (and the

1 Tribunal will note that although YONAI had served in
2 cabinets with several others of the accused here, he
3 testified only for HATA) shows why the prosecution
4 did not call him. They could not afford to, for al-
5 though his testimony supports their contention that
6 certain circles were in favor of the Tripartite Pact
7 and wished to smash the YONAI Cabinet in order to
8 achieve their aim, HATA was not one of this group.
9 The prosecution's very thin case, based as it is on
10 newspaper articles which this Tribunal has condemned
11 as unworthy evidence and extracts based on hearsay
12 statements in KIDO's diary that HATA was pro-Tripartite
13 Pact, would be exploded by YONAI's testimony. Not
14 only that, but we also corrected another oversight on
15 the part of the prosecution by producing ARITA, Foreign
16 Minister in the YONAI Cabinet, who also testified that
17 HATA supported the YONAI Cabinet and its policies, and
18 had been opposed to the Tripartite Pact since the days
19 of the HIRANUMA Cabinet when ARITA was Foreign Minister,
20 YONAI was Navy Minister, and HATA was Chief Aide-de-Camp
21 to the Emperor.

22 The next witness to testify as to HATA's
23 activities while War Minister was SAWADA, Shigeru. He
24 testified as to HATA's actions with reference to the
25 China Incident. He stated (p. 29,009):

1 "The question was how was the incident to be
2 settled? It was HATA's contention that the best way
3 to secure peace with China was to reduce the strength
4 of the Japanese troops in China. As his first step in
5 this direction, he sought to decrease, in drawing up
6 the army budget for the year 1940, the number of Japanese
7 troops in China from 900,000 to 500,000. The General
8 Staff was completely opposed to such an amount of
9 reduction and said it was impossible. The matter was
10 then taken up and discussed between the War Minister
11 and the General Staff and eventually the number of
12 troops was decreased to between 600,000 and 650,000."

13 Are these, then, the actions of a man who
14 "worked on plans and preparations for aggressive war"
15 while he was War Minister?

16 Next, we produced the witness TANAKA, Ryukichi,
17 who was also the star witness for the prosecution and
18 was produced several times by them. He testified
19 (p. 29,408):

20 "Q What, if you know, was the position of
21 General HATA with reference to the proposed Tripartite
22 Pact?

23 "A I know that General HATA was very strongly
24 opposed to it. In fact, it was very well known in army
25 circles that HATA strongly opposed the proposed

Tripartite Pact."

1 Later, General TANAKA, with reference to the
2 China Incident and HATA's actions with reference
3 thereto as War Minister, was questioned and answered
4 as follows (p. 29,411):
5

6 "Q While HATA was War Minister and you were
7 a section chief under him, do you know if General HATA
8 took any action with reference to the China Incident?

9 "A Yes. In the fall of 1939 when HATA was
10 War Minister in the ABE Cabinet, I began, under
11 instructions from General HATA, negotiations with Chiang
12 Kai-shek for a peaceful settlement of the China Incident.
13 HATA told me that he wanted to bring about peace with
14 China by the reduction and then the withdrawal of all
15 Japanese troops from China. HATA told me that because
16 of the opposition around him to his plan, we would have
17 to work under cover and unofficially. General HATA
18 gave me two points on which to work. One was to arrange
19 the dates and place for the two messengers, one from
20 HATA and one from Chiang Kai-shek, to meet, and the
21 second was that the basis of the peace treaty would be
22 the evacuation of all Japanese troops from China.
23 HATA told me that while the negotiations were going on
24 he would show his good faith to the Chinese by reducing
25 the Japanese troops in China from 900,000 to between

1 500,000 and 600,000 when he made the next budget as War
2 Minister, and I know that in his 1940 budget he did
3 reduce the number of Japanese troops in China to approx-
4 imately 600,000. However, there was great opposition
5 from within the War Ministry and the General Staff to
6 any withdrawal of Japanese troops from China. It was
7 insisted that Japanese troops should be permanently kept
8 in the Shanghai and North China areas. HATA opposed
9 this. He stated that we must evacuate all troops from
10 China. He stated that if we did not evacuate Japanese
11 troops from China there would be absolutely no hope of
12 concluding a peace treaty with Chiang Kai-shek. The
13 necessary negotiations with Chiang Kai-shek were so
14 secret that at first the preliminary steps had to be
15 carried out with signal codes."

16 Thus the testimony of TANAKA confirms the
17 evidence given by SAWADA with reference to HATA's
18 actions while War Minister on the China Incident and
19 the testimony of YONAI and ARITA as to HATA's opposi-
20 tion to the Tripartite Pact. Surely, the prosecution
21 after having used TANAKA for so much and so often to
22 help them make out their own case will not try to im-
23 peach their star witness when he gives testimony on
24 behalf of one of the accused, namely, HATA. It is
25 highly significant that the prosecution did not even

1 attempt to cross-examine either SAWADA or TANAKA on
2 HATA's reduction of the Japanese troops in China by
3 cutting the army budget appropriations for the China
4 Incident. This was the only budget that HATA prepared
5 during the ten months that he was War Minister in the
6 ABE and YONAI Cabinets. His actions, while War Minis-
7 ter, speak far more eloquently as to his position with
8 reference to the China Incident than any speech he
9 might have made publicly or any intentions he might have
10 expressed privately.

11 The prosecution, and the Tribunal, on occasion,
12 have characterized as propaganda, speeches and writings
13 offered as evidence by other accused when their actions
14 while in office belied those speeches or writings.
15 Here, we have offered the best kind of evidence, namely,
16 action taken by HATA while in office and the evidence
17 given by two people who should know, namely, SAWADA,
18 Vice-Chief of the General Staff at the time, and TANAKA,
19 Section Chief of the Military Service Bureau in the
20 War Ministry at the time, and the testimony of both,
21 we repeat, went absolutely unchallenged by the
22 prosecution.
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Surely, such action was not the action of a man who "worked on plans and preparations for aggressive war," while he was War Minister. As we revealed, while reviewing all the exhibits above which the prosecution claims show that HATA "worked on plans and preparations for aggressive war" while War Minister, the prosecution's evidence on this second point, are negative in nature; not one of them directly connects HATA as a member of any conspiracy, if indeed a conspiracy existed; not one of them showed that HATA in any wise forwarded the plans of any such alleged conspiracy; not one of them shows HATA as favoring any new aggressive war. It must be remembered, too, that at the time HATA was War Minister, the China Incident was already three years old, and the Pacific War did not begin until the end of 1941. If, by saying that HATA "worked on plans and preparations for aggressive war" the prosecution means the China Incident, HATA's actions in reducing the army budget lay at rest that contention. Anything he may have said publicly in support of the policies of the YONAI Cabinet could not, by any stretch of the imagination, be called "working on plans and preparations for aggressive war" since, as we have shown by quotes from Mr. Tavenner and Mr. Keenan, the prosecution rightly believes the YONAI Cabinet a peace cabinet. If, by working on "plans and preparations

1 for aggressive war" while War Minister, the prosecution
2 means the war which broke out later, namely the Pacific
3 War, we again state that none of the exhibits above re-
4 ferred to even remotely connect HATA with any such plans
5 and preparations. In this instance we can go one step
6 further and give positive evidence and again, as before,
7 uncontroverted evidence that HATA unequivocally showed
8 he was opposed to any war, or talk of war, with the
9 Western Powers.

10 We refer the Tribunal to the testimony of
11 TANAKA, Ryukichi (p. 29,410):

12 "A Yes, in 1939 when General HATA learned that
13 a certain colonel made a speech in Sendai attacking the
14 United States and England, saying, 'Down with those
15 countries,' he became indignant and ordered me to have
16 that officer brought back to Tokyo. When I had him
17 brought back to Tokyo, General HATA reprimanded him and
18 then transferred him to an outlying post as punishment."

19 The witness, OIKAWA (p. 29,004) who was Navy
20 Minister in the Second and Third KONOYE Cabinets
21 testified:

22 "In or about September, 1941, Lieutenant
23 General USHIROGU, Chief of Staff of the China Expedition-
24 ary Forces, called upon me at the Navy Minister's office
25 as a messenger dispatched from General HATA, Shunroku,

1 the Commander in Chief of the China Expeditionary Forces,
2 with the following message from General HATA:

3 "Recently, relations between America and Japan
4 have been deteriorating. America is opposed to Japan's
5 stationing her troops in China. I believe that in order
6 to avoid a clash with America, we must withdraw all our
7 troops from China. I heartily request you to do your
8 utmost as Navy Minister to prevent a conflict between
9 America and Japan."

10 There was no cross-examination by the prose-
11 cution of this witness in this all-important testimony.

12 The witness TANAKA confirmed OIKAWA's testi-
13 mony on this point (p. 29,413):

14 "Q After General HATA became Commander of the
15 Japanese Forces in China while you were still a Bureau
16 Chief in the War Ministry, do you know of any statements
17 made or any actions taken by General HATA with reference
18 to the Pacific War?

19 "A Yes. In September, 1941, when General
20 HATA was Commander in China and when relations between
21 America and Japan were steadily deteriorating, General
22 HATA sent his Chief of Staff, Lieutenant General USHIROGU.
23 to Tokyo to see me and tell me that he, HATA, wanted to
24 withdraw all Japanese troops from China in order to
25 avoid a war with America. HATA asked me to help pass

this plan of his in the War Ministry.

1 "Q Then what happened?

2 "A After General USHIROGU had seen them, he
3 came and told me the answers he received from each of
4 these men, before he left for China again to report to
5 General HATA."

6 To summarize Point 2, that HATA "as Minister of
7 War in the ABE and YONAI Cabinets, he helped to deter-
8 mine the national policy and worked on plans and pre-
9 parations for aggressive war during that period," the
10 prosecution's evidence which we have reviewed utterly
11 fails to sustain the prosecution's contention. On the
12 other hand, the defense evidence offered by YONAI and
13 ARITA shows HATA opposed the Tripartite Pact from as
14 far back as 1938, had supported the YONAI Cabinet and its
15 policies, which cabinet and policies, as the quotes from
16 Mr. Tavenner and Mr. Keenan show, the prosecution has
17 held up as pro-peace, pro-Anglo-American and Anti-Tri-
18 partite Pact. Over and beyond that, HATA took positive
19 steps to bring about peace with China, and implemented
20 and supported his peace overtures to China with a reduc-
21 tion in the Japanese Army budget for the China Incident,
22 bringing down the Japanese Army strength in China from
23 900,000 to approximately 600,000, and this, as TANAKA
24 and SAWADA tell us, in the face of the strenuous
25

1 opposition of the General Staff in Tokyo. Far from pro-
2 moting plans for aggressive war in the Pacific, he cen-
3 sured and punished a Japanese colonel who had ranted
4 against England and America, and even after he had left
5 the War Ministry and was in China, far removed from the
6 Tokyo scene and utterly without policy-making power, he
7 had sent his Chief of Staff urging that, in order to
8 avoid a war in the Pacific, Japan should withdraw all
9 its troops from China. While War Minister he had advo-
10 cated the withdrawal of all Japanese troops from China,
11 so his position in this respect was consistent through-
12 out. Surely these actions overwhelm any contention or
13 inferences which the prosecution may seek to draw from
14 the negative type of testimony on which it relies and
15 which we have previously reviewed, to sustain its point
16 that HATA "worked on plans and preparations for aggres-
17 sive war" while War Minister.

18 We now turn our attention to the prosecution's
19 third point, "that he was one of the prime movers in the
20 overthrow of the YONAI Cabinet, thus giving new direction
21 and expansion to the entire conspiracy." This third
22 point presupposes that a conspiracy existed, and that the
23 most certain thing in this entire trial, next to the un-
24 challenged fact that a war did take place, is that the
25 prosecution has completely and totally failed to establish

1 the existence of a conspiracy. Here there is no "Mein
2 Kampf," no Fuhrer, no single party, no relentless direc-
3 tion, no pattern. The question of conspiracy is treated
4 fully elsewhere in the defense summations, and we adopt
5 that argument. Our interest in this particular summation
6 is with the acts of HATA while War Minister. It is the
7 only position of a policy-making level which HATA ever
8 held, and it is the only opportunity HATA ever had of
9 joining the conspiracy, if such ever existed, or showing
10 that he knew a conspiracy existed and was a member of it.
11 We maintain that all the evidence adduced under Point 2
12 absolutely fails to show that HATA was a member cons-
13 ciously, or unconsciously of any conspiracy.

14 To begin with, HATA became War Minister, not
15 because he belonged to, or was a member of any military
16 clique, or member of any conspiracy. He did not become
17 War Minister because any of the accused in the dock nomi-
18 nated him to be War Minister. He became War Minister
19 in the ABE Cabinet in spite of, not because of, the
20 actions of the Three Chiefs who, except in this instance,
21 invariably nominate the new War Minister. When the
22 HIRANUMA Cabinet fell and the ABE Cabinet came into being,
23 the Three Chiefs named General TADA to be War Minister.
24 The Emperor disapproved and ordered that HATA be given
25 the post. On this point General TANAKA testified

(p. 29,409):

1 "Q Do you know if there were any other
2 reasons why the army opposed General HATA as strongly
3 as you say you know they did?

4 "A Yes, there were several reasons. The
5 hatred and dislike of General HATA persisted from the
6 day when he first supported the readjustment plan of the
7 army when General UGAKI was War Minister and increased
8 when he became War Minister in the ABE Cabinet, which
9 cabinet preceded the YONAI Cabinet. Two incidents
10 served to heighten the hatred and dislike for HATA. The
11 first was that another man had been recommended by the
12 Three Chiefs' Council to be War Minister in the ABE
13 Cabinet but the Emperor ordered that HATA should become
14 the War Minister and the post was given to General HATA."
15

16 Further, on this point, during Mr. Keenan's
17 cross-examination of the accused KIDO, this evidence
18 came out (p. 31,339):

19 "Q And the Emperor did recommend the appoint-
20 ment to be UMEZU or HATA, and he got General HATA,
21 didn't he?

22 "A Yes.

23 "Q And HATA at that time was his Chief Aide-
24 de-Camp?

25 "A Yes.

1 "Q So that it was quite apparent there was a
2 good deal of personal choice involved in that appoint-
3 ment?

4 "A Yes."

5 This, then, was how HATA became War Minister.
6 The Emperor himself interceded to make HATA War Minister.
7 Throughout the trial, the prosecution has made it
8 pellucid that it absolved the Emperor of all complicity
9 in the alleged conspiracy. In his now famous colloquy
10 with the President of this Tribunal, Mr. Keenan made it
11 crystal clear that he did not hold the Emperor respons-
12 ible for or implicated in the actions which led to the
13 war. The chief prosecutor's examination of KIDO and
14 TOJO further amplifies the prosecution's stand on this
15 point. Here, then, is the action of the Emperor who has
16 been absolved of guilt directly intervening in the affair
17 of state to reject the regularly-nominated War Minister
18 and to order the appointment of his own personal choice,
19 General HATA, who at that time was his Chief Aide-de-
20 Camp. It is apparent, then, that HATA had the full con-
21 fidence of the Emperor and was prepared to carry out the
22 Emperor's policies as long as he served as War Minister.
23 The prosecution cannot contend that HATA was a conspirator
24 or an advocate of war or an advocate of the Triparte Pact
25 because HATA became War Minister on orders from the man

absolved of all criminality by the prosecution. It must
1 be the position of the prosecution that HATA was not a
2 conspirator because of his appointment by the Emperor
3 for, as we have seen earlier, the prosecution seeks to
4 make HATA's approval of MUTO and TOJO to their respect-
5 ive positions in the War Ministry a criminal act or an
6 act in furtherance of the conspiracy. If HATA's
7 approval of this appointment of TOJO and MUTO was the
8 act of a conspirator because TOJO and MUTO today stand
9 accused before this Tribunal, then similarly the prose-
10 cution must contend that the Emperor because of his inter-
11 vention to make HATA, who today stands accused before
12 this Tribunal, War Minister, also committed a criminal
13 act or joined and furthered the alleged conspiracy.
14 Since they do not contend that the Emperor, by making
15 HATA War Minister, committed such a crime but on the
16 contrary they exculpate him of complicity, the only con-
17 clusion is that HATA was not, and could not be stated to
18 be, a member of the conspiracy.
19

20 Our contention that HATA opposed the Tripartite
21 Pact now receives additional support when it is remem-
22 bered that ARITA stated (p. 28,945):
23

24 "In fact, I know General HATA opposed the Tri-
25 partite Pact from the days it was being first discussed
in Japan. When I was Foreign Minister in the HIRANUMA

1 Cabinet, I had occasion to have an audience with the
2 Emperor. While waiting to be received, I met General
3 HATA, who was then Aide-de-Camp to His Majesty. We
4 conversed informally and the subject of the Tripartite
5 Pact came up. General HATA stated it appeared the
6 Emperor objected to the proposed pact and that he him-
7 self was strongly opposed to it."

8 In the latter stages of the individual defense
9 presentations before the Tribunal, ample evidence came
10 out that the Emperor opposed the Tripartite Pact and was
11 dismayed when MATSUOKA signed it in September of 1940.
12 Here, by ARITA's statement, which is unchallenged, HATA,
13 then Chief Aide-de-Camp to the Emperor, told ARITA that
14 the Emperor opposed the Pact. Is it at all possible to
15 believe that the Emperor would insist on making War
16 Minister, in that critical period when the Tripartite
17 Pact was being considered, a man who would be in favor
18 of the Tripartite Pact when the Emperor himself opposed
19 it? For HATA to know that the Emperor opposed the Pact,
20 he and the Emperor must have discussed it, and the
21 Emperor must have known that HATA also opposed the Pact
22 and would carry out the Emperor's wishes in opposing the
23 Pact as long as he was War Minister. It is inescapable
24 that the Emperor, conclusively established as opposing
25 the Pact from its beginning, would only appoint a War

Minister who was also opposed to the Tripartite Pact.
1 That HATA adhered to his anti-Tripartite position is
2 proved conclusively by the following: Not once during
3 the ABE Cabinet did the Tripartite Pact come up. No
4 evidence has been introduced by either side that the ABE
5 Cabinet ever discussed the Tripartite Pact. Since it
6 was the army that favored the Tripartite Pact, the
7 support in the Cabinet for the Tripartite Pact would have
8 come from the one man in the Cabinet to whom the army
9 could give orders -- HATA, the War Minister. As we have
10 just stated, the question of the Pact was never broached
11 during this Cabinet.
12

13 Now we come to the critical YONAI Cabinet. The
14 two men who could tell the Tribunal what was done about
15 the Tripartite Pact in this Cabinet, YONAI and ARITA,
16 were not produced by the prosecution, but by the defense,
17 because of course, while their testimony would help the
18 prosecution's over-all picture that the army wanted the
19 Tripartite Pact, it would explode the prosecution's con-
20 tention that HATA also supported the Tripartite Pact and
21 was responsible because of this feeling for the Tripar-
22 tite Pact, for the wrecking of the YONAI Cabinet. YONAI
23 stated: (p. 28,917):
24

25 "With respect to the Tripartite Pact with the
Axis countries, my Cabinet was completely opposed to it

1 and for this reason this question did not even once
2 come up in our Cabinet conferences. Coming to this ques-
3 tion and to General HATA who was my War Minister, he
4 earnestly co-operated with my Cabinet's policy and, of
5 course, naturally was opposed to the Pact."

6 ARITA stated (p. 28,945):

7 "The YONAI Cabinet was opposed to the Tripartite
8 Pact because we were opposed to any entanglements with
9 Germany. Such being the case, the Tripartite Pact was
10 never during the life of the YONAI Cabinet put on the
11 agenda for discussion by the Ministers of the Cabinet.
12 General HATA was the War Minister in the YONAI Cabinet
13 and throughout his tenure of office he was in full
14 accord with the policy of the Cabinet and co-operated
15 fully with it."
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1 The testimony of ARITA was not challenged on
2 this point, but the prosecution did try to impeach
3 Admiral YONAI through a newspaper article which
4 purported to give a different version of the breakup
5 of the YONAI Cabinet. We will not discourse on the
6 value of newspaper articles. The Tribunal has on
7 many occasions properly characterized their value
8 as evidence. The Tribunal will not forget the
9 persistence with which Admiral YONAI denied that the
10 newspaper article gave a true account of the fall
11 of the YONAI Cabinet. The prosecution also sought to
12 impeach Admiral YONAI by means of a certain interrogation
13 taken by some Russian officer before this trial began.
14 Again Admiral YONAI denied fully and completely that
15 he ever gave the answers or made the statements imputed
16 to him. Admiral YONAI was testifying before the
17 Tribunal under oath and subject to cross-examination,
18 whereas the newspaper article and the alleged interrogation
19 had no such virtues. If the prosecution placed any
20 faith in either of these two items, why did it not
21 offer them in its case in chief against HATA? If
22 the prosecution thought these items were true accounts,
23 why did it now show these items to YONAI and ask him
24 to testify in accordance therewith? As a matter of
25 fact, the prosecution had served upon us an affidavit

1 by YONAI and had intended to use him as a witness
2 until it must have realized that upon our cross-
3 examination of YONAI, HATA would have been completely
4 absolved of any responsibility for the wrecking of
5 the YONAI Cabinet.

6 It will be noted that the prosecution did
7 not challenge the statements of YONAI and ARITA that
8 the Tripartite Pact was never discussed by the ministers
9 at any of the cabinet meetings. How, then, since
10 HATA was War Minister in both the ABE and YONAI
11 Cabinets which never discussed the Tripartite Pact
12 on a cabinet level, can the prosecution contend that
13 HATA supported the Tripartite Pact? If, indeed, he
14 were a supporter of the Pact, would he not have
15 broached it at least once during the more than ten
16 months he was War Minister in the two cabinets?

17 In the preceding HIRANUMA Cabinet, where the
18 Pact had adherents, it was constantly discussed. In
19 the succeeding 2nd KONOYE Cabinet, it was discussed
20 and soon signed. How, in the face of this silence
21 on the Pact in the two cabinets in which HATA was War
22 Minister, can the prosecution contend HATA supported
23 the Pact? How can the prosecution in one breath
24 exculpate the Emperor but in the next breath state that
25 the Emperor's own personal appointee as War Minister

was a supporter of the Tripartite Pact? Finally,
1 where is there even one quote from any statement
2 by HATA before he became War Minister, while he was
3 War Minister and after he was Minister to indicate
4 his support of the Pact? The prosecution relies only
5 on inferences, conclusions, newspaper articles which
6 it didn't dare offer in its case in chief, interrogations
7 which YONAI on the stand and under oath stated did
8 not contain his correct answers, and diary excerpts
9 based on hearsay. We rely not on negative evidence
10 but on direct evidence of SAWADA, TANAKA, ARITA and
11 YONAI and OIKAWA. The prosecution produced not one
12 witness against HATA in this entire trial, not one
13 witness to accuse him of wrongful acts in the YONAI
14 Cabinet. Surely, the Tribunal will note the difference
15 in value of the testimony offered by the prosecution
16 and by the defense with reference to HATA's part in
17 the downfall of the YONAI Cabinet.
18

19 To continue with the prosecution's Third
20 Point, namely, that HATA was "a prime mover" in the
21 downfall of the YONAI Cabinet, let us analyze the
22 evidence offered on this point by both the prosecution
23 and the defense and see whether HATA deliberately
24 overthrew the YONAI Cabinet, or whether HATA himself
25 was overthrown along with the YONAI Cabinet because

1 he was a supporter of the YONAI Cabinet and not, as
2 the prosecution contends, a mortal enemy of the cabinet
3 and its policies.

4 Here, again, we are faced with the fact that
5 there is nowhere any official record produced by
6 either side, of a speech or an address by HATA. We,
7 therefore, must examine the circumstances surrounding
8 the downfall of the YONAI Cabinet and the testimony
9 under oath before the Tribunal, of the people who
10 knew best these circumstances because they were
11 members of the cabinet itself, or held positions
12 subordinate to or superior to HATA in the army and
13 the War Ministry.

14 The prosecution, as shown by Mr. Comyns
15 Carr's answer to our motion for dismissal, relies
16 entirely (page 16,830-1) on prosecution exhibit No 532,
17 a lengthy excerpt from KIDO's Diary. As we shall
18 see in a moment when we analyze this exhibit, all of
19 KIDO's information contained in this exhibit is
20 hearsay. On the other hand, the defense evidence on
21 this point contains no hearsay, but is encompassed
22 in the direct testimony under oath before the Tribunal
23 by the Prime Minister, and the Foreign Minister of
24 that Cabinet, YONAI and ARITA, SAWADA Shigeru, Vice-
25 Chief of the General Staff, and TANAKA, the prosecution's

1 star witness and a section chief in the War Ministry
2 at that time.

3 Admiral YONAI stated (page 28,918):

4 "And so, as my cabinet opposed and excluded
5 such a pact with Germany and also because it was not
6 pro-German, a desire to overthrow my cabinet came into
7 being. Those who opposed my cabinet were endeavoring
8 to kill two birds with one stone; that is, to have
9 General HATA, who was opposed to the Tripartite Pact,
10 resign from the government and simultaneously to
11 overthrow the cabinet. Eventually, their plan was
12 carried out and their objective was obtained -- two
13 birds killed with one stone. When General HATA resigned,
14 I believed and felt that his resignation was not of
15 his own free will, but that he was forced to resign
16 by elements he was powerless to fight and today I
17 am more convinced than ever that my beliefs then were
18 correct."

19 Here is a positive unequivocal statement
20 by the one man who should know whether HATA deliberately
21 overthrew his cabinet. He and his cabinet as we have
22 shown from quotes by Mr. Tavenner and Mr. Keenan,
23 were praised both before and after YONAI's appearance
24 on the stand before this Tribunal. Mr. Sutton sought
25 to destroy this testimony by cross-examining Admiral

YONAI on a newspaper article which purported to contain a quote from a note HATA is alleged to have written YONAI before HATA's resignation. The note contained the words "...how about deciding to have the cabinet resign?" (page 28,932). Thereafter, for eleven pages of cross-examination Admiral YONAI stoutly insisted that no such note had ever been received from HATA and the cross-examination ended as follows: (page 28,941)

"Q Do you now say, Admiral, that you did not receive any note from General HATA in July prior to his resignation?

"A Yes, I still insist that I did not receive it.

"Q Do you recall a conversation with a member of the cabinet secretariat on 3 June 1946 relative to the receipt by you in July, 1940, of a note from General HATA?

"A Did you say 1946?

"Q I beg your pardon; June 3, 1947. I said '6' by error.

"A There was nothing of the kind this year.

"Q Did you not in that conversation with a member of the cabinet secretariat on June 3, 1947, say that General HATA delivered to you a note of this purport?

1 "A No, I didn't say anything of the kind.

2 "Q And did you not also say that you
3 returned the note to General HATA on that occasion
4 after you had looked at it?

5 "A No recollection of it at all.

6 "Q Admiral, had you received a note of
7 the purport of the one which you read from the Asahi
8 Shimbun from your War Minister, would it not have
9 indicated that HATA was intending to destroy your
10 cabinet?"

11 After objection by the defense, the witness
12 was ordered to answer the question (page 28,943). His
13 answer was:

14 "A No, I deny that. There was nothing of
15 the end.

16 "Q And do you tell the Tribunal that a
17 note of this importance from the War Minister to the
18 Prime Minister, which was published in the leading
19 Tokyo newspaper of that day, with a direct quotation
20 of the note in the newspaper, has never been brought
21 to your attention until today?

22 "A That is right, I have never received it."

23 First, with reference to this newspaper
24 article, we point to the wording of the alleged note.
25

"...how about deciding to have the cabinet resign?" The

1 very wording itself is ridiculous. Here is a War
2 Minister in a cabinet of one of the world's leading
3 nations writing to the Prime Minister of that cabinet,
4 a man then holding one of the most powerful positions
5 in the world, and preparing, the prosecution would
6 have us believe, to destroy the cabinet. A man in
7 such a position, writing on such a serious subject,
8 the prosecution would have us believe, would write to
9 the Prime Minister the same way that a love-struck high
10 school boy would send a note to the girl in the next
11 aisle asking "How about deciding to have a date tonight?"
12 It is inconceivable that a full General would write
13 to his country's Prime Minister on so serious a matter
14 as the destruction of a national government in so
15 sophomoric a manner. Clearly, the Tribunal's consistent
16 position that newspaper articles have no value as
17 evidence is borne out in this case.

18 Now as to YONAI himself. If, indeed, HATA
19 had sent this note to him, and then had proceeded to
20 destroy the YONAI Cabinet, what earthly reason would
21 YONAI have for appearing before this Tribunal and
22 stating again and again and again, even at the expense
23 of being chided by the President of this Tribunal,
24 that HATA had never sent such a note to him? And
25 why would he insist that HATA "was forced to resign by

1 elements he was powerless to fight, and today I am
2 more convinced than ever that my beliefs then were
3 correct"? What earthly reason would this man have
4 for taking the stand in behalf of HATA, if HATA, as
5 the prosecution contends, wrecked his cabinet? YONAI
6 is a free man, he has not been, or is he now in Sugamo
7 to be tried in the future for war crimes. He was
8 under no obligation of any nature whatsoever, to HATA.
9 He testified voluntarily for HATA and, although he
10 was a member of four other cabinets as Navy Minister,
11 and was associated with many other accused in the
12 dock before this Tribunal, he testified only for HATA.
13 There can be no question, whatsoever, that YONAI is
14 telling the absolute truth in this case that HATA
15 never sent him such a note and that HATA did not resign
16 voluntarily from the YONAI Cabinet.

17 With reference to the newspaper article, we
18 remind the Tribunal of the prosecution's oft-repeated
19 allegation that the press was controlled by certain
20 powerful circles in Japan. Shortly, we shall show the
21 Tribunal a clear connection among this untruthful
22 article in the controlled Japanese press, the people
23 who forced HATA to resign as War Minister, and the
24 people whom KIDO quotes in his diary and on which the
25 prosecution relies entirely as exhibit 532 to prove

1 its point that HATA wilfully destroyed the YONAI
2 Cabinet.

3 YONAI's testimony, in itself wholly credible,
4 we submit, receives corroboration and support in
5 the testimony of our next three witnesses. ARITA,
6 Foreign Minister in the YONAI Cabinet, testified:
7 (28,946

8 "When HATA resigned as War Minister in the
9 YONAI Cabinet, I believed there must have been some
10 strong reason that forced him to resign his portfolio.
11 The cooperative attitude then taken by HATA in the
12 YONAI Cabinet leads me to believe, even today, that
13 his resignation was against his will".

14 The next witness SAWADA, Shigeru, Vice-
15 Chief of the Imperial General Staff (29,017):

16 "The intention of overthrowing the YONAI
17 Cabinet and the plan to effect peace by using Germany
18 was predominant in the army. Besides, War Minister,
19 HATA was one of the supporters of the YONAI Cabinet
20 policy. Hence, the consensus of opinion in military
21 circles was that HATA was not useful in accelerating
22 the attempts at closer ties with Germany and the
23 subsequent use of the power of Germany to effect peace
24 with China and that he lacked the desire to do so and
25 a change in War Ministers was being strongly urged.

1 Indeed, this concensus of opinion of military circles
2 was reflected in the decision of the General Staff
3 and this decision..."

4 Here again, then, there is competent testimony
5 by the Vice-Chief of the General Staff, who should
6 know, because he played such a vital role in the
7 downfall of the YONAI Cabinet that "HATA was one of
8 the supporters of the YONAI Cabinet policy".

9 THE PRESIDENT: We will adjourn until half-
10 past one.

11 (Whereupon, at 1200, a recess was taken.)
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AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at 1330.

2 MARSHAL OF THE COURT: The International
3 Military Tribunal for the Far East is now resumed.

4 THE PRESIDENT: Mr. Lazarus.

5 MR. LAZARUS: If the Tribunal please, I have
6 during the recess stricken the portions which referred
7 to exhibits or parts of exhibits which were not read
8 into the record. Would the Tribunal like to go through
9 those parts now and let me notify the Tribunal?
10

11 THE PRESIDENT: Omit them when you come to
12 them, Mr. Lazarus.

13 MR. LAZARUS: The bottom of page 53, if the
14 Tribunal please:
15

16 Now let us proceed to examine why HATA
17 resigned as War Minister. SAWADA testified (29,010):
18

19 "It was the ardent desire of Prince KANIN,
20 Chief of the General Staff to attain a solution of the
21 Incident through use of Germany and it was about the
22 beginning of July 1940 that he told me that he intended
23 to accelerate peace with China through the mediation
24 of Germany and that he intended to use the War Minister
25 to break the deadlock between the army and the cabinet.
So, he ordered me to consult with the officials in the

1 War Ministry, with these ends in view. Accordingly,
2 I called on the Vice-Minister of War, Lieutenant
3 General ANAMI, and we discussed the matter between
4 the two of us. The Vice-Minister said finally that
5 as long as the Chief of Staff did not modify his
6 view of using Germany to accelerate peace with China,
7 there was no alternative but to change the present
8 cabinet, that in view of the character of the present
9 cabinet, it was impossible to comply with the Chief
10 of Staff's objective even if some changes were made
11 among its members. When I asked the Vice-Minister
12 if that was also the opinion of the War Minister,
13 he informed me that that was not the opinion of
14 General HATA, but it was the opinion of the Vice-
15 Minister and the men below him in the War Ministry.
16 I pointed out that the matter was of extreme import-
17 ance as the opinion of the army in general and that
18 of the cabinet were in opposition to each other and
19 that we had better meet again after I had once more
20 consulted with the Chief of the General Staff, and
21 then I parted with him.
22

23 "The Chief of Staff, having heard my report
24 stated that since his opinion represented that of the
25 majority of the army and that since according to the
Vice-Minister there was no other way but a change of

1 cabinet, we must do our utmost to follow that method
2 and that he was truly sorry for the War Minister that
3 such an extreme measure had to be taken, but one must
4 bear this for the good of the country in such a vital
5 national affair. I again called on the Vice-Minister,
6 stated the decision of the Chief of the General Staff
7 and learned that ANAMI had not changed his views since
8 our previous meeting. Some days later, by the orders
9 of Prince KANIN, I wrote a letter which in substance
10 stated as follows:"

11 Here, the prosecution, which has relied all
12 along in the case against General HATA on hearsay
13 evidence in excerpts from KIDO's Diary, and a news-
14 paper article which was branded as untruthful by
15 YONAI, an alleged conversation with some unknown
16 member of the cabinet secretariat in 1947 which was
17 also denied by YONAI, an interrogation which YONAI
18 stated did not contain his true answers, took
19 advantage of a very, very technical rule of evidence
20 and objected to our reading the contents of the letter,
21 although the author himself of that letter was about
22 to testify as to its contents. Third and fourth-hand
23 hearsay has been offered by the prosecution and has
24 been accepted by the Tribunal, but here the author of
25 a most important letter could not testify as to the

1 contents of that letter, when that letter was all-
2 important for the explanation of HATA's resignation
3 as War Minister in the YONAI Cabinet. The defense
4 did all in its power, all that it was humanly possible
5 to do in the circumstances to secure the admission of
6 the contents of that letter. We caused to be made a
7 thorough search in the War Ministry files for the
8 letter and introduced the following certificate of
9 the First Demobilization Bureau (29,402):

10 "I am the Section Chief of Documents in the
11 First Demobilization Bureau and hereby certify that
12 after searching for the letter which was sent in
13 July 1940 from Chief of General Staff, Prince KANIN,
14 to War Minister HATA, Shunroku, it could not be
15 found in the files of the First Demobilization Bureau.

16 "Date, 23 September 1947, at Tokyo.

17 "Signed, MIYAMA, Yozo."

18 The Demobilization Bureau as successor to
19 the War Ministry was the proper custodian of that
20 letter. There is ample evidence in the record that
21 many of its files were destroyed in the great fire
22 raids.

23 In the hopes that the letter might be found
24 among the personal effects of General HATA, and in
25 order to check into every possible place where the

1 letter could be, we caused a thorough search to be
2 made of the home and the personal files of General
3 HATA, and introduced the affidavit of Dr. KANZAKI,
4 Japanese counsel, and introduced his affidavit
5 (29,403):

6 "In order to obtain the letter which was
7 sent from the Chief of General Staff, Prince KANIN,
8 to War Minister HATA, Shunroku, in July 1940, I, since
9 spring 1946, have requested the First Demobilization
10 Bureau to take all measures possible to search for the
11 letter but it could not be discovered. Further, with
12 the assistance of Mrs. HATA and her son Shunpachi,
13 I have searched HATA, Shunroku's house with the
14 utmost of my power several times, but I could not
15 discover it."

16 With this, we had done all we could do in
17 our search for the letter, but still the prosecution
18 was successful in keeping out this direct testimony,
19 although the prosecution itself was relying on the
20 rankest kind of hearsay evidence which would never
21 have been accepted in any regular court.

22 THE PRESIDENT: What do you mean by regular
23 court?

24 MR. LAZARUS: National court.

25 THE PRESIDENT: You had better change that

to "national."

1 MR. LAZARUS: It should be "national." I
2 am sorry.

3 SAWADA continues: (29,016)

4 "Some days later, by the orders of Prince
5 KANIN, I wrote a letter. . ." "The letter was
6 sealed and signed by Prince KANIN and he ordered me
7 to deliver it to War Minister HATA. I did so. In
8 this way, General HATA received the letter and I am
9 not quite sure but it might be the following day or
10 the day after that General HATA submitted his resigna-
11 tion, and then the YONAI Cabinet resigned en bloc.

12
13 "H.I.H. Prince KANIN, besides being the
14 Chief of the General Staff, was a member of the
15 Emperor's Household and a father of the Army in age,
16 rank, experience, etc., and it was quite natural that
17 General HATA, although War Minister, nevertheless, as
18 a loyal subject of the Emperor, was compelled to obey
19 his strong demand."

20 Here, then, is why and how HATA resigned.
21 HATA, having been appointed War Minister by direction
22 of the Emperor, had faithfully, according to all
23 credible testimony, supported the YONAI Cabinet and
24 its anti-tripartite policy. The Chief of the Imperial
25 General Staff was HATA's superior and, upon receipt

1 of a letter from him, delivered by the Vice-Chief of
2 the Imperial General Staff, HATA resigned. As
3 SAWADA says: "General HATA, although War Minister,
4 nevertheless as a loyal subject of the Emperor was
5 compelled to obey his strong demand."

6 It will be noted that the man in the War
7 Ministry who worked to bring about HATA's enforced
8 resignation through orders by the Chief of the
9 Imperial General Staff was ANAMI, the Vice-Minister.
10 Of him, we shall have more to say shortly. Here is
11 unequivocal testimony that HATA was not a member of
12 the gang which was seeking to smash the YONAI Cabinet.
13 It states clearly that the need for a change in
14 cabinets was not the opinion of General HATA. And
15 the Chief of the General Staff "was truly sorry for
16 the War Minister that such an extreme measure had to
17 be taken. . ." If HATA had been a member of the clique
18 which sought to overthrow the cabinet, all these con-
19 ferences between the Vice-Chief of the General Staff
20 and the Vice War Minister would not have been neces-
21 sary. That it was ANAMI who played the leading role,
22 and that HATA was not privy to these machinations
23 that SAWADA's testimony revealed is corroborated by
24 TANAKA (29,409). He states:
25

"On the 14th of February 1945, I met General

1 ANAMI and at that time he told me that he regretted
2 very much the part he had played in opposing General
3 HATA and in bringing about the resignation of General
4 HATA as War Minister in the YONAI Cabinet and he also
5 told me the details of the opposition within the War
6 Ministry against General HATA. General ANAMI had been
7 Vice-Minister of War under General HATA in the YONAI
8 Cabinet."

9 Now let us examine the one document on which
10 the prosecution relies to prove its point that HATA
11 was a prime mover in the downfall of the YONAI Cabinet.
12 The exhibit 532 is a series of excerpts from KIDO's
13 Diary immediately preceding and following the downfall
14 of the YONAI Cabinet. KIDO quotes Vice-Minister of
15 War ANAMI as follows: (6,243)

16 "Now when a political change may be unavoi-
17 dable within the next four or five days, and the
18 military have been perfecting preparations to meet
19 the abrupt changes in the latest world situation, the
20 character of the YONAI Cabinet is not at all suitable
21 for making negotiations with Germany and Italy and it
22 might even cause a fatal delay. The conclusion is that
23 a cabinet change is inevitable in order to face this
24 grave situation. The army unanimously will support
25 Prince KONOYE's candidacy. Upon meeting Prince KONOYE

1 after his return to Tokyo, the War Minister will take
2 the opportunity to submit an important proposal to
3 Premier YONAI."

4 We see, then, that as early as 8 July,
5 ANAMI was stating that "the YONAI Cabinet was not at
6 all suitable" and "that a cabinet change is inevit-
7 able." He states at the end that the War Minister
8 will make an important proposal to the Premier. This,
9 undoubtedly, refers to the note that the anti-YONAI
10 clique was intending to have HATA submit to YONAI
11 and which, through their control of the press, they
12 apparently published that HATA did send it to YONAI.
13 This is the note that YONAI denies flatly HATA ever
14 sent him. The machinations of this clique become
15 clearer as we go on.

16 On the same date, 8 July, and in the same
17 exhibit, KIDO then quotes the Chief Aide-de-Camp
18 (6,243):
19

20 "In the army general staff office in recent
21 days, the officers forming the central core have pre-
22 sented their opinions to the leading staff members
23 from the viewpoints of both political and military
24 policies, as they anticipate that the personnel of
25 the present government will never be able to suffi-
ciently cope with the latest world situation. As a

1 result, it is understood that the Chief of the Army
2 General Staff, Prince KANIN, told the War Minister
3 about the matter, and the War Minister has been much
4 concerned about what measures to take. Such being
5 the case, the expression of resolute determination by
6 the War Minister may well depend upon the behavior of
7 the cabinet itself. And so on . . ."

8 Here again, we find an expression of General
9 Staff dissatisfaction with the YONAI Cabinet, and
10 the Chief of the General Staff KANIN speaks to the
11 War Minister about it, "and the War Minister has been
12 much concerned about what measures to take." Does
13 that sound like a willingness, a desire, an intention
14 on the part of HATA to destroy the YONAI Cabinet? On
15 the contrary, it seems the other way around, else why
16 should HATA be concerned when the Chief of the General
17 Staff tells him of the General Staff's lack of satis-
18 faction with the YONAI Cabinet? If HATA were prepared
19 to overthrow the YONAI Cabinet this excerpt would read
20 that the War Minister agreed with the Chief of the
21 General Staff instead of "the War Minister has been
22 much concerned."

24 Under date of 16 July in the same exhibit,
25 KIDO quotes Chief Cabinet Secretary ISHIWATA (6,244):

"War Minister HATA met Premier YONAI after

1 9:00 a.m. this morning and submitted his resignation.
2 When told by the Premier to produce a successor, he
3 replied that an answer may be expected by evening and
4 left. As the army cannot be expected to produce a
5 successor, the Premier, after calling an extraordinary
6 cabinet meeting today, will probably have to go to the
7 Hayama Imperial villa to submit a mass resignation."

8 There is no refusal here, as the prosecution
9 claims, by HATA to name a successor. Had HATA been
10 privy to the plans to destroy the YONAI Cabinet and
11 had he resigned deliberately in order to overthrow
12 the YONAI Cabinet, he would promptly have told the
13 Premier that no one would be appointed to succeed
14 himself, but instead HATA told YONAI that "an answer
15 may be expected by evening." The letter from KANIN,
16 ordering HATA to resign, had come swiftly and suddenly,
17 and HATA could not know whether a new War Minister
18 who would support in the cabinet the army's desire
19 for the Tripartite Pact would be named. HATA, it must
20 be remembered, would be only one of the Three Chiefs
21 who would name the new War Minister, one of the other
22 three being the Chief of the General Staff, Prince
23 KANIN, who had ordered HATA to resign in order to bring
24 about the downfall of the YONAI Cabinet.
25

Even the Chief Cabinet Secretary, realizing

the situation, states that the army "cannot be
1 expected to produce a successor." On the same date,
2 and in the same exhibit, KIDO records Vice-Minister
3 ANAMI (6,246) as having told the Chief Aide-de-Camp
4 as follows:

5 "Received a phone call from Vice-Minister
6 ANAMI of the War Ministry, according to whom the state
7 of affairs leading to the (War) Minister's resignation,
8 is as follows: Several days ago a memorandum contain-
9 ing the army's opinion on the present situation was
10 submitted to the Premier, who summoned the War Minister
11 this morning and telling him that the army's idea was
12 different from that of the present cabinet, asked him
13 bluntly to resign in case of inconvenience. Thereupon
14 the War Minister at once submitted his resignation.
15 As the Premier further asked him to recommend his
16 successor, the Three Chief officers' meeting was held
17 from 2:30 p.m. but because of the foregoing situation
18 it was extremely difficult to make any recommendation."
19

20 Here, at last, we get some inkling as to the
21 note allegedly sent by HATA to YONAI and it is more
22 than likely "the important proposal" that ANAMI
23 referred to previously in this same exhibit. Now we
24 see that it was "a memorandum containing the army's
25 opinion" which had been submitted to the Prime Minister

several days previously and, since this is the 16th
1 day of July, that would place it around the 12th day
2 of July, the day the note was allegedly sent by HATA.
3 It does not state here that HATA sent the memorandum
4 to YONAI. It says the memorandum "was submitted."
5 ANAMI, who is a leading member of the clique, which
6 is in the process of overthrowing the YONAI Cabinet,
7 continues giving his version of the event, and states
8 that YONAI asked HATA to resign. This, if the
9 Tribunal please, is the prosecution's own evidence
10 that YONAI "asked him (HATA) bluntly to resign."
11 And yet in Point Three which we are now discussing,
12 the prosecution contends that HATA resigned in order
13 to overthrow the YONAI Cabinet and then deliberately
14 refused to name a successor. This is, indeed, a
15 pretty case of blowing hot and blowing cold. The
16 prosecution, of course, although it has introduced
17 evidence that HATA resigned of his own volition and
18 in the very same exhibit that HATA had been ordered
19 to resign by the Prime Minister himself, chose the
20 story which it felt was most harmful to HATA.
21

22 Continuing the same date and the same exhibit
23 (6,247), KIDO states:
24

25 "Premier YONAI came to Hayama from Tokyo at
6:40 p.m. and explained the details of the resignation

1 en bloc. It was about as I have set it down. As a
2 result of the conference of the Three Chiefs, it was
3 said that although the selection of a successor was
4 not being refused, it was difficult to choose one and
5 no forecast was possible."

6 "Premier YONAI in announcing to the Cabinet
7 his decision in favor of a resignation en bloc did not
8 as was usual in the past call each minister separately
9 to his room and talk to him. Instead he assembled all
10 the members in the cabinet meeting room and stating
11 first that this was not a cabinet meeting, expressed
12 his decision. At this, War Minister HATA scowled, but
13 stood up and made a speech. That is the story."

14 Here, again the prosecution, with its own
15 exhibit, contradicts one of its own main contentions
16 against HATA. The prosecution has contended that HATA
17 refused to name a successor as War Minister in the
18 YONAI Cabinet, yet here in this prosecution exhibit
19 it is stated "the selection of a successor was not being
20 refused"!

21 Now let us see what YONAI had to say about
22 the selection of a successor (28,919). YONAI confirms
23 the above-quoted statement from KIDO's Diary that "the
24 selection of a successor was not being refused" and
25 that "it was difficult to choose one":

1 "I asked HATA to recommend someone to be the
2 next War Minister. HATA immediately went out saying
3 that the successor would be decided in the Three
4 Chief's Conference. This Conference was composed of
5 the Chief of Staff, the Inspector General of Military
6 Education, and the War Minister. It was their duty
7 to name the new War Minister. He returned in the
8 evening looking very worried and said there was no
9 man who would be the successor to the post. His face
10 looked very pensive because he was conscious that
11 this lack of the successor would become the cause of
12 the fall of the cabinet -- consequently he himself
13 would be this cause. I read this feeling in his face,
14 and after the general resignation of the cabinet,
15 called HATA to my room and said, as nearly as I can
16 remember: 'I can understand your situation -- you
17 have suffered very much. As for me, however, I do
18 not blame you at all. I understand. Take it easy
19 and do not worry.' I shook his hand and HATA smiled
20 a sad smile -- a smile of resignation, peculiar to a
21 Japanese. His situation was indeed a pitiful one."

22 Thus defense witness YONAI confirms the
23 prosecution's own evidence that appointment of a succeed-
24 ing War Minister "was not being refused." If HATA
25 were intending to destroy the YONAI Cabinet, he would

1 have informed YONAI immediately that there would be
2 no succeeding War Minister and that would have ended
3 the matter. But, as both YONAI and the prosecution's
4 own evidence show, HATA attempted, by attending the
5 Three Chiefs' meeting, to find a succeeding War
6 Minister, and thus to save the YONAI Cabinet although
7 he, HATA, had resigned after receipt of a letter from
8 his superior, Prince KANIN.

9 Continuing in this same exhibit, we find still
10 another turn in the prosecution's own evidence as to
11 what really happened to bring about the resignation
12 of the YONAI Cabinet. Although as stated above, KIDO
13 says: "Premier YONAI came to Hayama at 6:40 p.m. and
14 explained the details of the resignation en bloc. It
15 was about as I have set it down," immediately after
16 his recording of ANAMI's version of what had happened,
17 namely, that YONAI had ordered HATA to resign (6,246)
18 just a few pages later (6,250), and one day later in
19 the diary, at a council of the senior statesmen, KIDO
20 told them when they asked for the details: "Lord
21 Privy Seal . . . I don't know the details but the gist
22 of what I learned of the situation from Premier YONAI
23 yesterday at Hayama is as follows: The Army thinks
24 that the present cabinet is not adequate to carry out
25 a policy which will suit the present ever-changing

world situation and which will not be regretted later.

1 It seems to show also a tendency to form a political
2 reapproachment with Germany and Italy. It also feels
3 that even in domestic affairs the government, being
4 separated from the people will be unable to obtain
5 satisfactory results in a number of policies, and
6 that unless the political structure is strengthened,
7 the government will be unable to cope with the present
8 emergency. In a word since the War Minister's opinion
9 is different from that of the present cabinet, he
10 cannot fulfill his duty as the leader of the Army.
11 Hence he has come to the point of resigning."

13 Here is the perfect example of the value of
14 hearsay testimony in KIDO's Diary. In the same
15 prosecution excerpt, KIDO records a version of the
16 downfall of the YONAI Cabinet that the Vice-Minister
17 of War told to the Chief Aide-de-Camp, who, in turn,
18 told it to KIDO who recorded it in his diary. This
19 version was that YONAI ordered HATA to resign. The
20 same day and a few lines later in the diary, KIDO says
21 after YONAI's explanation of the event, "It was about
22 as I have set it down." One day later in his diary,
23 KIDO, this time telling the event to the council of
24 senior statesmen, says HATA had come to the point of
25 resigning and but a few lines before ANAMI's version,

1 KIDO had recorded Chief Cabinet Secretary ISHIWATA's
2 version that "War Minister HATA met Premier YONAI
3 after 9:00 a.m. this morning and submitted his
4 resignation." And, to complete the circle after
5 KIDO recorded these three different versions of the
6 event in his diary, we have KIDO's testimony under
7 oath before this Tribunal; we have this question
8 and answer on redirect examination (31,613):

9 "Q Marquis KIDO, last Monday when
10 Mr. Keenan asked you if General HATA by his resigna-
11 tion broke up the YONAI Cabinet you said it appeared
12 so. Can you clear that, please?

13 "A The situation at that time was that
14 War Minister HATA did not resign of his own volition.
15 That is what I meant to say."

16 Here, then, we have additional confirmation
17 of the defense contention that HATA did not seek to
18 destroy the YONAI Cabinet. "HATA did not resign of
19 his own volition." How, out of this evidence, can
20 the prosecution contend that HATA was a prime mover
21 in the overthrow of the YONAI Cabinet? The prosecu-
22 tion's position in this matter, based on its own
23 evidence, is ridiculous.

24 Continuing with this same prosecution exhibit,
25 we next learn (6,254):

"When War Minister HATA came to Hayama today to report to the throne on personnel, he told me what the opinion of the army is. Generally it was the same as that which KIDO had heard from YONAI yesterday. I told him that this business was very regrettable, he and I felt it was one consolation that we could see where the responsibility lay, although there had been up till now many uncertain attitudes. HATA, who was once Chief Aide-de-Camp and who knows how busy I am at such times, was extremely sorry and had tears in his eyes."

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1 It will be noted that this entry refers to the
2 previous day's entry when KIDO said "it was about as
3 I have set it down" and the passage almost immediately
4 preceding that was ANAMI's version that YONAI had
5 ordered HATA to resign. And going back still farther,
6 we find ISHIWATA's version that HATA resigned. Bearing
7 in mind that the Emperor himself had caused HATA to
8 become War Minister, it is highly significant that the
9 Emperor should say to the man he had made War Minister
10 in order to fight the Tri-Partite Pact, "I told him
11 that this business was very regrettable, but I felt
12 it was one consolation that we could see where the
13 responsibility lay, although there had been up till
14 now many uncertain attitudes." The Emperor says to
15 HATA, "We can see where the responsibility lay,"
16 meaning that HATA and the Emperor saw eye to eye as
17 to the group which caused the downfall of the YONAI
18 Cabinet and that group did not include HATA because
19 in the rest of the passage it will be noticed that the
20 Emperor used the pronoun "I".

21 The Tribunal well knows how the Emperor had
22 excoriated the previous War Minister when he had dis-
23 pleased the Emperor, and surely if HATA had been
24 responsible for the overthrow of the YONAI Cabinet,
25 the Emperor would not have received him so cordially

and told him that they, the Emperor and the man he had made War Minister, could see where the responsibility for the overthrow of the cabinet lay. That the Emperor wanted the army to support the YONAI Cabinet is made crystal-clear in this same prosecution exhibit when under date 16 July, KIDO recorded (pros. Ex. 532, T. 6,248):

"In the course of my audience with the Emperor, the Emperor told me the circumstances surrounding his summoning of War Minister HATA at the time when the Imperial order for cabinet formation was given to Admiral YONAI.

The Emperor said that he had not shown him any special favor, although there was a gross misunderstanding about the matter. He had been told that KONOYE also was of the opinion that it would be well to question HATA, and that YUASA, too, thought that questioning would be all right. He had called HATA and asked him whether the army was willing to cooperate with YONAI, to whom he, the Emperor, had given the Imperial order. As HATA had replied that the army would cooperate, the Emperor had said that that was fine and had not given any orders."

So, then, if a few short months later, HATA had violated his pledge and overthrown the YONAI Cabinet,

would the Emperor have received HATA so well? And
1 would HATA, if he had deliberately wrecked the Cabinet,
2 as the prosecution contends, have been "extremely sorry
3 and had tears in his eyes" when he had this interview
4 with the Emperor, and the Emperor told him "we could
5 see where the responsibility lay"? Therefore, from all
6 these passages that we have quoted from the prosecution's
7 own evidence, it can be seen that HATA did not resign
8 voluntarily from the YONAI Cabinet, had no intention of
9 wrecking it, did not refuse to name a successor. Every
10 credible bit of evidence points that HATA faithfully
11 followed the Emperor's request to support the YONAI
12 Cabinet, that HATA did not sponsor the Tir-Partite Pact,
13 for, as we have seen, it never came up for cabinet dis-
14 cussion. We have purposely examined every scrap of
15 evidence on this point, pro and con, in order to give
16 the Tribunal the full picture. The Tribunal will note
17 that nowhere in KIDO's voluminous recordings of the
18 various versions of the event, is there any mention
19 made of a note sent by HATA to Premier YONAI. Surely
20 this should convince even the prosecution that their
21 newspaper article is worthless.

23 Additional evidence that HATA did not resign
24 voluntarily in order to destroy the cabinet, but, on
25 the contrary, was a supporter of the cabinet, is found

1 in the examination of the accused MUTO by the Tribunal.
2 In answer to a question put by the Tribunal, he stated
3 (T. 33,244):

4 "When I returned to Tokyo on the 9th or 10th of
5 July, I found that the War Minister had received a very
6 strong document from the General Staff embodying its
7 strong opinions. This also is included in my affidavit.

8 "Because of this note, the War Minister's
9 position ... War Minister HATA's position had become
10 very difficult. The reason was that when War Minister
11 HATA assumed his portfolio he received a very strong
12 demand from the Emperor that he cooperate with Prime
13 Minister YONAI. Therefore, War Minister HATA, who since
14 the establishment of the YONAI Cabinet had fully cooper-
15 ated with it, was suddenly faced by those demands of the
16 General Staff which might even lead to a demand for the
17 general resignation of the cabinet."

18 Here again, then, we find additional direct
19 testimony that HATA supported and cooperated with the
20 YONAI Cabinet, and this evidence was elicited by the
21 Tribunal itself. MUTO says, "War Minister HATA's pos-
22 ition had become very difficult." And this is exactly
23 what YONAI, ARITA, SAWADA and TANAKA told the Court.
24 HATA, because of his own inclinations as the above
25 witnesses testified, and because of the Emperor's orders

1 to cooperate with the YONAI Cabinet, was being forced
2 to resign by orders of his superior, H.I.H. Prince KANIN,
3 Chief of the Imperial General Staff, who, with Vice
4 War Minister ANAMI and the other staff officers, as
5 KIDO noted in his previously quoted prosecution exhibit,
6 wanted the YONAI Cabinet and HATA out of the way because
7 they considered them inadequate to meet the changing
8 world conditions. To them this meant signing up with
9 Germany and Italy who were apparently then victorious in
10 Europe.

11 As to whether HATA refused to name a War Minis-
12 ter to succeed himself, Mr. English, cross-examining
13 the accused MUTO, brought out this testimony (T. 33,246):

14 "Q General, it is a fact, isn't it, that HATA
15 resigned on 16 July, 1940?

16 "A Yes.

17 "Q It is also a fact that when asked by Premier
18 YONAI to recommend a successor, HATA reported to the
19 Premier on the same day, that is, 16 July 1940, that
20 the Three Chiefs' Conference had no one to recommend
21 as his successor for War Minister?

22 "A What you have just said is at variance with
23 what I know of the facts.

24 "Q And did not the failure of the military to
25 recommend a successor for War Minister HATA force the

resignation of the YONAI Cabinet?

1 "A I heard that on the 16th, when Premier YONAI
2 had a conference with HATA the two failed to come to an
3 agreement of views, and, thereupon, Premier YONAI said,
4 'I must ask you to resign' . . . told HATA 'I must ask
5 you to resign.' Furthermore, Premier YONAI is reported
6 to have told War Minister HATA on that occasion: 'I
7 don't suppose that we will be able to find a successor
8 for your post.' General HATA replied: 'Well, I can't
9 say anything here by myself. I will have to go back to
10 the War Ministry and see the results of the Three Chiefs'
11 Conference and then return to the War Ministry.'

12 "Then the Three Chiefs -- the Three Army Chiefs --
13 met with each other and although I do not know the con-
14 tents of their conference, they finally came to the con-
15 clusion that there was no one who wished to accept a
16 post as War Minister in succession to General HATA.
17 Thereupon, General HATA returned to the Cabinet and
18 reported that decision to the Prime Minister."

20 Here again we have testimony that there wasn't
21 refusal by HATA to name a successor. He didn't refuse
22 but he went to the conference. If he had deliberately
23 intended to destroy the Cabinet, and plans had been laid
24 by him, he would have told the Premier that he would
25 refuse to name a successor and the Tribunal will note

1 Mr. English didn't say HATA refused but instead in his
2 question he conceded " . . . the Three Chiefs had no one
3 to recommend as his successor."

4 We have still another source of confirmation
5 that HATA did not seek to wreck the Cabinet, as the
6 prosecution contents. In Mr. Tavenner's lengthy open-
7 ing address on Tri-Partite Pact phase of the prosecution's
8 case, he states (T. 5,865):

9 "After several attempts to bring about the
10 downfall of the YONAI Cabinet had proved unsuccessful,
11 the military resorted to the device of having the War
12 Minister resign."

13 Nowhere, in all the evidence that follows, nor
14 in cross-examination by the prosecution of our defense
15 witnesses is it even suggested that HATA was in on any
16 of these "several attempts" to destroy the YONAI Cabinet.
17 Mr. Tavenner carefully refrains from stating HATA was
18 responsible. He states "the military resorted to the
19 device of having the War Minister resign." Now, if HATA
20 intended to destroy the YONAI Cabinet he could very
21 easily have resorted to tactics of creating disagreement
22 on policy during the life of the cabinet. The Tribunal
23 has heard such evidence that War Ministers both before
24 and after HATA did that and caused cabinets to collapse.
25 Yet nowhere is there one word that HATA made speeches or

1 brought about dissensions in the cabinet. The evidence
2 is overwhelming he always supported the cabinet.

3 The final evidence that HATA was not pro-
4 Tri-Partite Pact is to be found again in the prosecu-
5 tions own evidence. We turn again to Mr. Tavenner's
6 opening remarks in the prosecution's Tri-Partite phase.
7 Speaking of the HONOYE Government which succeeded the
8 YONAI Cabinet, he stated (T. 5,865):

9 "The new government formed a commission of
10 twenty-four leading persons consisting mostly of follow-
11 ers of the policy of collaboration with the Axis powers
12 with the aim of planning suitable action for the adjust-
13 ment of state affairs on an authoritarian basis."

14 HATA was not one of these persons. And
15 wouldn't he be one of the "leading persons consisting
16 mostly of followers of the policy of collaboration
17 with the axis powers", if the prosecution contention
18 that he was pro-Tri-Partite Pact were true? It will be
19 remembered that HATA was still in Tokyo, having been
20 made military councillor, which is the interim position
21 to which all high ranking Japanese officers are appointed
22 between assignments, while waiting orders to their new
23 command. While HATA was Cabinet Councillor, there
24 never was a meeting, a conference or any action taken.
25 The post is merely a temporary honorific one for high

ranking officers. HATA remained in Japan till he assumed
1 his post in China in 1941.

2 Continuing with Mr. Tavenner, he told this
3 court that in order to implement the provisions of the
4 newly signed Tri-Partite Pact, various commissions were
5 formed (T. 5,886). "The commissions formed under the
6 provisions of the Tri-Partite Pact included in their
7 membership the accused...." and Mr. Tavenner names
8 six accused, four of whom were military men. And again,
9 HATA is not one of them. These two instances are perfect
10 evidence that HATA was not personally, and was not con-
11 sidered by others, a supporter of the Pact.

12 For the clinching evidence that even the Germans
13 did not consider HATA as pro-Tri-Partite Pact, we invite
14 the Tribunal's attention to two prosecution exhibits
15 which we contend clinch our position for us, if, indeed,
16 additional evidence were needed in view of all the above-
17 reviewed evidence. Prosecution exhibit 1272 (T. 11,352)
18 shows Germany sought to honor with awards "certain Japan-
19 ese for receiving German decorations on the occasion of
20 the Tri-Partite Pact." Nine Japanese are named in the
21 exhibit, six of them accused in this trial. But nowhere
22 do we find HATA's name. The awards are to the support-
23 ers of the Tri-Partite Pact and "this concerns men of
24 the immediate group surrounding TOJO who will presumably
25

retain for some time their decisive influence on the
1 shaping of Japanese policy." And still the prosecution
2 alleges HATA is tied in with TOJO and that HATA put
3 TOJO in as succeeding War Minister! They don't even
4 consider HATA here as in the "immediate group surround-
5 ing "OJO", or as a man with any "influence on the shap-
6 ing of Japanese policy." This certainly looks as though
7 only the prosecution considered HATA pro-Pact and anti-
8 YONAI. And it isn't because HATA has a command in the
9 field and is no longer in the War Ministry, because one
10 of the accused gets a medal although he too "has now
11 received an important field command." (T. 11,355) Every-
12 one of the nine citations is for pro-Pact and pro-
13 collaboration support. But HATA is not among them.
14

15 We proceed to the next Prosecution exhibit on
16 this point and learn (exhibit 2247, T. 16,181) that on
17 the anniversary of the Pact, five high Japanese, includ-
18 ing three accused, received German awards. Again, HATA
19 was not among them. And all this, we again stress, is
20 prosecution evidence. This surely lays at rest the
21 contention that HATA was pro-Pact and anti-YONAI. Not
22 before he was War Minister, not while he was War Minister,
23 did HATA say or do anything to show he was pro-Pact, and
24 even the surrounding evidence, as above quoted, after
25 HATA was War Minister, fails to give the prosecution a

leg to stand on, when it contends HATA wrecked the YONAI Cabinet as his part in the alleged conspiracy. Surely, if he had performed such yeoman service in the cause of the conspiracy, he would not have been so pointedly ignored by the Germany as the above two prosecution exhibits shown. And he would not have been ignominiously kept in the background as a mere military councillor, with no meetings, no conferences, no one to counsel until finally, in April of 1941, he was sent to China, where he would be out of the way.

TANAKA and KIDO give the answer to HATA's silence at all times (except for only one occasion) on all matters political. He simply was an officer at all times, never a politician, never engaged in politics. TANAKA says (T. 29,410), "A further incident which served to aggravate the antipathy felt by those in high army circles (against HATA) was the following: General HATA was strongly opposed to the participation by army officers in politics and when he became War Minister for the first time, he addressed all the officers in the War Ministry Building. The gist of the speech was as follows:

"The present army is not trusted by the Emperor and it is the first duty of the army to endeavor to recover the Emperor's trust. In order to achieve this

1 objective, all military personnel should absolutely cease
2 any participation in politics and return to their regular
3 duties of soldiering."

4 And as an example of his enforcing this order
5 of "no politics", we again refer the Tribunal to TANAKA's
6 testimony, already quoted in this summation, that HATA
7 reprimanded and punished the colonel who had in a speech
8 in Sendai attacked the United States and England.

9 KIDO puts it best, as to HATA's not being a
10 militarist, when after his 300 page polemic against
11 militarists, he was questioned and answered as follows
12 (T. 31,236):

13 "Q Marquis KIDO, in your affidavit you refer to
14 the militarists and the fact that you consistently
15 fought them and opposed them. Do you include General
16 HATA in this category?

17 "A I do not include General HATA."

18 It is overpoweringly and overwhelmingly clear,
19 we respectfully submit, that all the evidence above
20 reviewed smashes completely the prosecution's contention
21 that HATA was pro-Tripartite Pact and that he was a
22 "prime mover in the overthrow of the YONAI Cabinet."

23 Next, we turn our contention to the prosecu-
24 tion's allegation that HATA "put into office as War
25 Minister, the accused "OJO." Let us examine the evidence.

1 First, we look at the unchallenged evidence given before
2 the Tribunal by NODA, Kengo, Chief of the Personnel
3 Affairs Bureau in the War Ministry at the time, who
4 stated TOJO's appointment was in the regular course of
5 standard Japanese army procedure (T. 29,394).

6 "After the resignation of the YONAI Cabinet,
7 as I was Chief of the Personnel Affairs Bureau, I used
8 the most scrupulous care and attention in recommending
9 the man to succeed General HATA as War Minister... I
10 took into full consideration the views prevalent in the
11 various bureaus of the War Ministry and the wishes of
12 the General Staff, and I consulted fully with the Vice-
13 Minister of War, General ANAMI. After all these consult-
14 ations and after a thorough-going study, I decided that
15 under the then existing circumstances Lieutenant-General
16 TOJO was suitable, and I, as Chief of the Personnel
17 Bureau, recommended him to War Minister HATA as the
18 succeeding War Minister. There were others who were
19 considered for the position of new War Minister, but
20 they were already in other important positions and
21 it was difficult to effect a speedy transfer.

22 "Lieutenant-General TOJO, on the other hand,
23 was in Tokyo, holding the position of Inspector-General
24 of the Air Force, and he had formerly been Chief of the
25 Military Affairs Bureau and of the Maintenance Bureau.

Further, he had once been the Vice-Minister of War in

1 the HIRANUMA Cabinet. I considered him a suitable
2 military administrator and it was the feeling in army
3 circles that no one except Lieutenant-General TOJO
4 would do, so under those circumstances, I recommended
5 him as the succeeding War Minister. In accordance
6 with this recommendation General HATA submitted the
7 name of General TOJO to the Three Chiefs' Conference
8 held on 18 July 1940. The Three Chiefs' Conference
9 was unanimous in recommending Lieutenant-General TOJO,
10 and General HATA's submitting the name of General TOJO
11 to the Three Chiefs' Conference was in accordance with
12 the standing procedure for such matters in the War
13 Ministry. As a matter of fact, neither War Minister
14 HATA nor I had any personal relations with HATA, nor
15 I had any personal relations with Lieutenant-General
16 TOJO in the past nor any intimate relations with him."

17 Further, on Mr. English's cross-examination,
18 General MUTO confirmed General NODA's testimony that
19 there was nothing irregular in TOJO's recommendation
20 as succeeding War Minister (33,247):

22 "Q Then it is true, General, that immediately
23 after the fall of the YONAI Cabinet, the Three Chiefs'
24 Conference recommended TOJO as next War Minister?

25 "A I know nothing about the content of the
Three Chiefs' Conference. I believe the things

1 happened -- I believe that the testimony of Lieutenant-
2 General NODA, who was the Chief of the Personnel Bureau
3 of the War Ministry, is true on this point."

4 As with the similarly regular recommendation
5 of General MUTO, which we have already covered, Mr.
6 Sutton here also seemed to think it important that
7 HATA could have refused to accept the recommendation
8 that came from the person whose duty it was to make it
9 (here, NODA) (29,299):

10 "Q My question was, did HATA, the retiring War
11 Minister, have authority to recommend for appointment
12 as the new War Minister some person other than the
13 person suggested by you? You may answer yes or no.

14 "A Yes."

15 We don't deny that. But is it significant?
16 What reason does the prosecution give that HATA should
17 refuse to follow the regular Japanese Army system in
18 these two cases? None.

19 If, on the other hand, some other persons
20 had been regularly recommended and HATA had refused
21 to follow the regular procedure and had himself rec-
22 ommended MUTO and TOJO, then the prosecution might
23 have a point. But the fact that HATA followed stand-
24 ard Japanese Army procedure when he didn't absolutely
25 have to is of no moment.

Continuing its cross-examination, the prosecution cleared up for the defense a fine point and helped our contention that HATA did not wilfully wreck the YONAI Cabinet and did not plan to do it. This cross-examination question and answer do it. (29,399):

"Q Were you requested by General HATA at any time prior to the resignation of the YONAI Cabinet to suggest the name of a person to succeed him as War Minister?

"A No."

Had HATA deliberately wrecked the YONAI Cabinet, he'd have known he was going to do it and would have told NODA before he resigned, not after. Further, if HATA had had any preference for TOJO as next War Minister, he'd have ordered NODA to recommend TOJO. Here again, on this point the prosecution comes to our rescue and itself gets this information for us by cross-examining our own witness thusly (T. 29,400):

"Q Was General HATA very desirous that TOJO should be appointed as War Minister to succeed him?

"A The fact of the matter is just this. I expressed my views recommending General TOJO as succeeding War Minister, and General HATA merely agreed with

my recommendation."

1 That kills, but good, through its own cross-
2 examination, the prosecution's contention that HATA,
3 as an act of conspiracy, personally made TOJO next
4 War Minister.
5

6 There is one last point. In continuing his
7 cross-examination, Mr. Sutton asks the following ques-
8 tions and receives the following answers (29,401):

9 "Q Did not General HATA, before KONOYE formed
10 his cabinet, go to the Emperor and recommend to the
11 Emperor that TOJO be appointed as War Minister?

12 "A I do not know about that.

13 "Q And was not this done secretly by War Minister
14 HATA at that time?

15 "A I do not think anything was done secretly.

16 "Q And did not the Emperor state that he thought
17 the procedure wrong because Prince KONOYE was still in
18 the midst of forming his cabinet and had not accepted
19 General TOJO for the post?
20

21 "A I do not know.

22 "Q And did not the Emperor state that he con-
23 sidered the action of War Minister HATA in secretly
24 recommending TOJO as his successor as being overhasty
25 and out of order?

 "A I am hearing such matters for the first time

1 now. I do not know."

2 NODA, then, had never heard of this. We
3 won't again go into the value of these excerpts from
4 KIDO's Diary. We leave to the Tribunal to determine
5 what such excerpts as these, which go unconfirmed
6 every time the prosecution cross-examined either the
7 accused or the defense witnesses, are worth. We'll
8 examine the excerpt which gave rise to these ques-
9 tions. It states (Ex. 539, T. 6,266):

10 "I was again received in audience this after-
11 noon from 2:25 to 2:50. The Emperor stated that the
12 War Minister had just secretly recommended TOJO for
13 War Minister and Tomoyuki YAMASHITA for Inspector-
14 General of the Air Force, but he thought the procedure
15 was wrong, for Prince KONOYE was still in the midst
16 of forming a cabinet and had not yet accepted TOJO
17 for the post, and, as he thought that the action was
18 rather overhasty, he had asked the War Minister whether
19 he did not think the action as being out of order."

20 We point out five things to the Tribunal with
21 reference to this exhibit. The first is that the entry
22 is dated 18 July, 1940, two days after HATA had resigned
23 as War Minister. Secondly, granting for the moment
24 that the excerpt is true, if HATA had deliberately
25 wrecked the YONAI Cabinet, would he dare face the

1 Emperor and recommend a successor in person, after
2 the Emperor, when the YONAI Cabinet had been created,
3 had ordered HATA to cooperate with it and HATA had
4 promised to do so? That seems most unlikely. And
5 if that had been the case, why didn't the Emperor
6 also excoriate HATA, while he was at it, for wrecking
7 the YONAI Cabinet, if indeed HATA had done so? And
8 the Tribunal has the examples of the Emperor's words
9 to ITAGAKI when he was War Minister and to the men
10 responsible for the signing of the Tripartite Pact
11 later. Thirdly, the Tribunal will note that HATA
12 came to recommend two men -- the new War Minister
13 and the new Inspector-General of the Air Force. It
14 was, therefore, not a special, dark, insidious visit
15 to recommend TOJO. It was a trip such as every re-
16 tiring War Minister must make to the Emperor to
17 recommend his successor and other appointments in the
18 succeeding War Ministry. The only thing here is that
19 KIDO quotes the Emperor as believing "that the action
20 was rather overhasty since KONOYE had not yet accepted
21 TOJO. But this was already two days after HATA had
22 resigned. Had it been done before HATA had resigned
23 or immediately after, it might appear improper or
24 certainly part of a prepared act. Nothing of the
25 sort appears here. Only that the Emperor asked HATA

1 "whether he did not think the action as being out of
2 order," since KONOYE had not yet made an announcement.
3 There's no positive statement that the action was
4 improper. Merely a question by the Emperor that
5 HATA made the recommendation too soon. There's not
6 even a suggestion that the recommendations should
7 never be made. Only that they were made too soon.
8 There's nothing capital here. It is very significant,
9 if the Tribunal please, that HATA also recommended
10 the Inspector-General of the Air Force at the same
11 time. It is thus proven that it was no special trip
12 for the sake of TOJO. It was no conspiratorial act
13 only for the new War Minister, but a normal action
14 by the outgoing War Minister, to perform his last
15 official duties -- recommendation to the Emperor of
16 the new high ranking War Ministry officials. Had it
17 been improper for the old War Minister to make any
18 recommendation at all, then it might look like an
19 attempt to jam through certain appointments. But we
20 have quoted the prosecution exhibit in full so the
21 Tribunal can see for itself the only question was that
22 of timing, not the act of recommending. The act of
23 recommending was wholly proper.
24

25 The fourth point in this exhibit we call to
the Tribunal's attention is the fact that when HATA

1 visited the Emperor on the 17th of July, one day
2 after his resignation (exhibit 532) already reviewed,
3 to report on personnel, he did not recommend TOJO,
4 but he did recommend him on his second visit, two
5 days after his resignation. If HATA's resignation
6 and his and the Three Chiefs' recommendation of TOJO
7 had been prearranged, would not HATA have proposed
8 TOJO the first time he visited the Emperor? The
9 prosecution would have us believe it was all part of
10 a plot and that HATA was in on it. Why then didn't
11 HATA immediately recommend TOJO? The answer was
12 secured for us by Mr. Sutton in his cross-examination
13 of NODA, already quoted which revealed that HATA did
14 not ask NODA to recommend a successor till after he,
15 HATA, had resigned as War Minister. Hence, the recom-
16 mendation was not ready the day after HATA resigned but
17 was ready two days later.

18 The Fifth Point we call to the Tribunal's
19 attention is the word "secretly" in the line: "The
20 Emperor stated that the War Minister had just sec-
21 retly recommended TOJO for War Minister" Let us
22 see if indeed this was a "secret" recommendation and
23 also let us see if the recommendation itself was
24 improper on the part of HATA. We'll examine the testi-
25 mony of a man who himself was twice War Minister and

1 was also the subject of this "secret" recommendation.

2 Mr. Keenan, after quoting exhibit 539 to the
3 accused TOJO, proceeded as follows (36,607):

4 "Q Can you tell us any reason why General HATA
5 should go to the Emperor and secretly suggest to the
6 Emperor that you be made War Minister at that time?

7 "A Well, I could imagine from the standpoint of
8 procedure after I became War Minister.

9 "Q Do you know of any other instance in which a
10 retiring War Minister went secretly to the Emperor
11 to recommend his successor in all the history of
12 modern Japan?

13 "A Yes, I know that. That is this: Shall I
14 explain?

15 "Q If there are other instances, yes, please do
16 so.

17 "A That is always the case. Personnel matters
18 with regard to general officers are done according to
19 the following procedure: Before any appointment is
20 made, an informal recommendation is made to the
21 Throne. There is nothing secret about it. This is the
22 procedure in Japan, and therefore I presume that in-
23 formal recommendation was made. But a question may
24 possibly arise, that is, as to time, when such informal
25 recommendation is made by the War Minister or the Navy

1 Minister, depending on the situation. The question
2 arises if the War Minister or the Navy Minister
3 should recommend a candidate for one of the two
4 posts before -- informally to the Throne before the
5 Premier-designate decides on the personnel of his
6 cabinet, because that would give rise to a political
7 issue. The proper procedure is that after the
8 Premier-designate has determined upon the Navy Minister
9 and the War Minister of his cabinet, then the preced-
10 ing Navy Minister and the War Minister make the in-
11 formal recommendation to the Throne. That is the
12 proper procedure. So I presume it is to that fact
13 KIDO is referring when he says in his diary to the
14 effect that the action -- when he mentions in his
15 diary that the action was rather overhasty.

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"There seems to be some doubt in your mind with regard to making informal recommendations to the Throne of the succeeding War Minister, but the procedure I have mentioned is customary procedure. There is nothing secret about it. It is our customary procedure. I will repeat it again.

"Q No.

"A (Continuing) so as to create no doubt. The fact of 'naiso', that is, making an informal suggestion or recommendation to the Throne, is a customary procedure and there is nothing secret about it. The only question is as to the time such recommendation is made."

After a short colloquy between Bench and bar, Mr. Keenan continued the cross-examination on this point. We quote it in toto so that the Court may get the full picture including the Language Board's correction at the President's request of the translation of the word "naiso", and the acceptance of that change by Mr. Keenan from "secret" to "informal recommendation."

"Q Well, to simplify the matter, Mr. TOJO, and to come back to the KIDO Diary, I will quote his language. He said that the War Minister had just secretly recommended TOJO for War Minister, and I suggest to you that that was the language of KIDO and not

my own. Do you say KIDO was wrong about that?

1 "A In the first place, the translation is
2 mistaken with regard to the word 'naiso' -- informal
3 recommendation. There is nothing secret about 'naiso'.
4 It was because you did not appear to understand what
5 I meant by 'naiso', informal recommendation, that I
6 tried to repeat my explanation to you and received the
7 reprimand of the Court.
8

9 "Q Mr. TOJO, you and I are on even terms:
10 I don't speak Japanese and you don't speak English, so
11 let us refer, if there is a question about it, to the
12 Language Arbitration Board.

13 "THE PRESIDENT: It is most important. We
14 will ask for an immediate determination by the Board.

15 "THE WITNESS: Another point I wish to mention
16 to you is that it is not only you who does not under-
17 stand the meaning of 'naiso', or informal recommendation.
18 Even many of the Japanese gathered here do not know
19 what it means.

20 "LANGUAGE ARBITER (Captain Kraft): The word
21 in question seems to be 'naiso', which, literally trans-
22 lated, means 'informal recommendation'.
23

24 "THE WITNESS: Well, that does not appear to
25 hit the nail on the head, but that is much better.

"BY MR. KEENAN:

1 "Q Now we will proceed to some parts of
2 KIDO's Diary on this very precise subject and see
3 if you can find some changes in the language that is
4 appropriate. I will repeat, with the Court's indul-
5 gence, a short paragraph of four or five or six lines
6 with the corrected statement of 'informally' instead
7 of 'secretly'.

8 "This is KIDO speaking for the moment:

9 "I was again received in audience this
10 afternoon from 225 to 250. The Emperor stated that
11 the War Minister had just informally recommended TOJO
12 for War Minister and Tomoyuki YAMASHITA for Inspector
13 General of the Air Force, but that he thought the
14 procedure was wrong.'

15 "Now, if that translation is correct, Mr.
16 TOJO, KIDO, the former Lord Keeper, is quoting the
17 Emperor of Japan as saying he thought the procedure
18 was wrong. Do you differ from the Emperor on that
19 point?

20 "A No, my opinion does not differ, but I
21 am saying that the question is when that informal
22 recommendation was made. It is the time.

23 "Q The entry is of 18 July 1940 and
24 the time is sometime between 225 and 250. Leaving
25 aside the Pearl Harbor episode, I would take that to

1 mean the afternoon and not in the early morning.

2 "A Well, I don't think that has anything
3 to do with the Pearl Harbor attack.

4 "Q I am asking you if it helped you in
5 answering the question to know that it apparently
6 was sometime between 225 in the afternoon and 250
7 on 18 July 1940 when this procedure took place that
8 we are referring to.

9 "A Well, is that so? In that case I believe,
10 as KIRO himself states here, that the informal recom-
11 mendation was made a little prematurely as to time.

12 "Q May I interrupt?

13 "A Well, I haven't completed my reply.

14 "Q But I wish to make a correction that I
15 think you will accept. Will you permit me to inter-
16 rupt you for a moment?

17 "THE PRESIDENT: Better let him complete
18 his reply, Mr. Chief of Counsel. We are having diffi-
19 culty here.

20 "A May I? It should be this way: On the
21 18th, if Prince KONOYE had not yet decided -- had not
22 yet definitely decided upon the War Minister of his
23 cabinet and an informal recommendation had taken place
24 at such a time, then that procedure was out of
25 order.

1 "Q Now may I ask you a question?

2 "A Please.

3 "Q The correction I was suggesting is that that
4 wasn't what KIDO said; that was KIDO quoting the
5 Emperor of Japan. Did you get that point?

6 "A Yes, very well.

7 "Q And KIDO said the Emperor told him that
8 Prince KONOYE was still in the midst of forming a
9 cabinet and had not yet accepted TOJO for the post.
10 Do you recall hearing that as an excerpt from his
11 diary?

12 "A Yes.

13 "Q Now, Mr. TOJO, I think you and I can agree
14 on one thing, that you turned out to be a rather
15 important member of Prince KONOYE's Cabinet, didn't
16 you?

17 "A Yes, I became an important member.

18 " Now, can you shed any light on the subject
19 matter of why this unusual procedure was adopted of
20 the outgoing War Minister who caused the fall of the
21 YONAI Cabinet going to the Emperor and suggesting you
22 as the War Minister for the new cabinet, even before
23 Prince KONOYE had made his own recommendation? Can
24 you help us on that subject? I am suggesting to you
25 that someone was awfully anxious to have you stop in

as War Minister at that time.

1 "A I do not affirm any such assumption, and
2 furthermore, if you will let me say it, there is
3 nothing unusual or strange about the outgoing War
4 Minister informally recommending to the Throne the
5 succeeding War Minister.

6 "Q Well, the Emperor thought this procedure
7 very strange, didn't he? And he said so to KIDO.

8 "A That is why I took such pains, even to the
9 extent of receiving a reprimand from the Court, to
10 explain the situation at that time. Now, this situ-
11 ation is not any too easy to understand, Mr. Chief of
12 Counsel. If a very detailed explanation were made
13 of the procedure and the situation, then perhaps you
14 might understand. I am suggesting to you that it is
15 a very difficult problem to understand.

16 "Q I am suggesting to you, Mr. TOJO, that you
17 are making it very difficult for us to understand it,
18 and I don't mean to be unkind about it, but I am
19 suggesting that the then Lord Keeper of the Privy
20 Seal quoted the Emperor of Japan as saying that this
21 was an improper procedure, and an over-hasty action.
22 That is what the Emperor said to KIDO if KIDO told
23 the truth, and I am therefore asking you --

24 "A I understand the situation very well. I
25

1 can also understand what KIDO states there, and I
2 furthermore understand what the Emperor felt or was
3 thinking very well -- what the Emperor said very well.

4 THE MONITOR: Strike out the first inter-
5 pretation.

6 "Q What I am suggesting is, if I may be permitted,
7 Mr. TOJO, I am not talking about suggestions made to
8 the Emperor for cabinet positions; I am talking about
9 this particular case where a suggestion was made by
10 the outgoing War Minister for his successor to the
11 Emperor before the Prime Minister had made up his
12 mind about it. That is what I am talking about.

13 "A Well, the situation was as I have already
14 explained to you in quite even unnecessary detail so
15 far. The point I have been endeavoring to make clear
16 to you is this: There is nothing strange or out of
17 the ordinary with regard to the procedure of 'naiso'
18 or informal recommendation. The doubt arises only
19 when an outgoing War Minister makes any such informal
20 recommendation to the Throne before the Premier
21 Designate -- in this case Prince KONOYE -- had de-
22 termined on the War Minister or the Navy Minister of
23 his cabinet. The procedure would be out of the
24 ordinary.
25

THE MONITOR: Japanese court reporter.

(Whereupon, the Japanese Court reporter

1 read.)

2 "A (Continuing) And so in this particular
3 case the question then arises -- the doubt then arises
4 in connection with such a procedure whether the time --
5 the proper time -- the recommendation was made at
6 the proper time and in a proper manner. If I said just
7 a few more words, I suppose the situation will be
8 even more clear.

9 "This is the situation: The War Minister
10 and the Navy Minister of a cabinet are formally
11 recommended to the Throne by the cabinet itself, but
12 candidates for these two offices, being an active
13 general officer or an admiral, there is the necessity
14 for the army and navy respectively to make an informal
15 recommendation to the Throne, in addition or aside
16 from the previous procedure carried out by the cabinet.

17 "Q Have you finished?

18 "A Yes, I have."
19

20 This, then, should completely set at rest the
21 contention that there was anything secret about HATA's
22 recommendation to the Emperor and that there was any-
23 thing sinister in the act of recommendation itself.
24 The recommendation was correct procedure, always
25 followed by the outgoing War Minister. The recommendation

1 was not made "secretly," but was an "informal
2 recommendation," and the only question was that of
3 time. Although the cabinet had resigned two days
4 before, and the Three Chiefs had already nominated
5 TOJO, Prince KONOYE, the Premier-designate, had not
6 yet, it seems, gotten around to making the formal
7 public announcement. He did so the next day.

8 This, then, completes our answer to the
9 prosecution's contention that HATA participated in
10 Japan's over-all aggression in three ways. One, as
11 commander of the Japanese armies in China; two, that
12 as Minister of War in the ABE and YONAI Cabinets he
13 "helped determine the national policy and worked on
14 plans and preparations for war during that period;"
15 and, three, that "he was one of the prime movers in
16 the overthrow of the YONAI Cabinet," and under this
17 third point the concomitant allegations that he was
18 a supporter of the Tripartite Pact, and that he
19 "secretly" recommended TOJO to the Emperor.

20 We move now to the last allegations which
21 the prosecution in its answer to our motion for dis-
22 missal makes against the accused HATA.

23 They are Count 45, Nanking, and Countes 47
24 to 50, the attacks against the Chinese cities Chengsha,
25 Hongyang, Kweilin, and Liuchow, and Counts 44, and

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24 to 50, the attacks against the Chinese cities Changsha,
25 Hongyang, Kweilin, and Liuchow, and Counts 44, and

1 53 to 55. HATA is also named in Count 46, the attack
2 on Canton. In our motion for dismissal we had claimed
3 that at the time, October 1938, HATA was only
4 Commanding General of the Japanese Army in Central
5 China and that the attack on Canton was made by the
6 South China Japanese Army under another commander and
7 that HATA was in no wise connected with this oper-
8 ation. Mr. Comyns Carr, in his answer to our motion
9 for dismissal, very properly recognized the truth of
10 our statement and accepted it. He stated (p. 16832):

11 "The attack on Canton, Count 46, was made
12 by the South China force and he can only be held
13 responsible for that on the basis that it was an
14 act of the conspiracy of which we contend he was a
15 member."

16 We, therefore, leave it at that and will not
17 go again into the evidence as to HATA's non-connec-
18 tion with that operation. We, of course, do not
19 accept Mr. Carr's statement that General HATA was a
20 member of the alleged conspiracy.

21 Count 53, we respectfully submit to the
22 Tribunal, is not even worthy of comment in this sum-
23 mation, because it is even more obvious with reference
24 to this count than it is with the general counts on
25 conspiracy that the prosecution has utterly failed

1 to prove conspiracy "to order, authorize, and permit
2 the commanders-in-chief of the several Japanese
3 naval and military forces" to commit the offenses
4 alleged in this count. The prosecution hasn't even
5 attempted to prove a conspiracy of this type. The
6 only thing this Tribunal has heard with reference to
7 this alleged conspiracy was when this particular
8 count in the Indictment was read into the record in
9 May 7, 1946. We therefore ignore it and will devote
10 ourselves to the counts in which some evidence was
11 introduced.

12 We respectfully direct the Tribunal's atten-
13 tion at this time to the fact that the accused HATA
14 is not named in Counts 37 and 38 the counts alleging
15 the conspiracy to murder by the initiation of war.
16 These conspiracies are alleged to have commenced on
17 both counts on June 1, 1940. On this date, HATA was
18 War Minister in the YONAI Cabinet and it is highly
19 significant that, although on Point Two in its
20 answer to our motion for dismissal the prosecution
21 alleges that HATA "worked on plans and preparations
22 for aggressive war" while he was War Minister, he is
23 not named as one of the conspirators in Counts 37
24 and 38, the conspiracy to murder counts. On this
25 point we shall have more to say later.

Count 44, like Count 53, is a count alleging conspiracy to murder prisoners of war and others. We respectfully submit the same contention as to this count as we did to Count 53, namely that the prosecution not only failed totally and completely to prove this alleged conspiracy, but they did not even attempt to offer any evidence with reference to it. We, therefore, shall ignore this count.

Mr. Carr, in his answer to our motion for dismissal, apparently agreeing with us that the wrong HATA is named in the Russian counts, skips Counts 51 and 52 and we shall likewise not take up the time of this Tribunal pointing out the lack of evidence against HATA with respect to these two murder counts.

THE PRESIDENT: We will recess for fifteen minutes.

(Whereupon, at 1445, a recess was taken until 1500, after which the proceedings were resumed as follows:)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 THE PRESIDENT: Mr. Lazarus.

4 MR. LAZARUS: With respect to Count 45, the
5 Nanking Count, Mr. Carr states (16831): "He is
6 charged in Count 45 with responsibility for the
7 attack upon and rape of Nanking when he held his im-
8 portant post at the War Ministry." At the time
9 referred to, HATA was Inspector-General of Military
10 Education and Supreme War Councillor. He had held
11 these posts only since 26 August 1937, less than four
12 months. As Inspector-General, of course, he had nothing
13 to do with tactics or strategy and hadn't trained the
14 troops involved in that short time. As for the Supreme
15 War Council, Mr. Herwitz of the prosecution told this
16 Tribunal when he was explaining the various positions
17 in Japan (p. 672): "Its function is to advise on all
18 military and naval policy generally and to coordinate
19 all administrative and tactical organizations. It
20 plays no part with respect to tactics and strategy."
21 And the prosecution has not produced one single meeting
22 held, one single bit of advice given by the council
23 or by HATA while HATA held this position. Therefore,
24 we respectfully submit, HATA cannot be held responsible
25 for the attack on Nanking under any conditions and we

will not go any further into the merits of this count,

1 as to HATA. We rely fully on the sound judgment of
2 the Tribunal in finding HATA was in no wise responsible
3 for Nanking.

4 We will devote our summation then to Counts
5 47 - 50, 54 and 55.

6 With reference to Count 47, the attack on
7 Hankow, the prosecution offered only one witness, an
8 American businessman named Dorrance (3390). He stated
9 that from the vantage point of an American ship in the
10 river he saw Japanese soldiers kicking Chinese into
11 the river and shooting them. This man is the only
12 witness, we repeat, produced by the prosecution on this
13 count. It is most peculiar that no Chinese citizen
14 of Hankow could be found to be brought before this
15 Tribunal to testify to support or corroborate the
16 statements of Dorrance. Surely in so large a city
17 someone must have seen these acts, that is, someone
18 must have seen them if they did take place. The
19 prosecution spared no expense in bringing witnesses
20 from far off places to testify about atrocities in
21 other sections of the Pacific. It is most peculiar,
22 in fact, it is extraordinary, that the prosecution
23 could not find one Chinese who would come forward to
24 testify on his own about these alleged atrocities, or
25

1 at least to corroborate and substantiate the state-
2 ments of Dorrance.

3 And Dorrance, if the Tribunal please, was the
4 manager of the American Standard Oil Company in
5 Hankow -- obviously, the war disrupted his business and
6 he could have nothing but ill to say of those whose
7 occupation of Hankow had ended his business. And
8 more extraordinary still is the fact that the prosecu-
9 tion could not even produce one affidavit, or one
10 statement from any source, or one newspaper article
11 about atrocities in Hankow, while the record is replete
12 with hundreds of articles, statements and affidavits
13 used by the prosecution to support its contention that
14 atrocities had taken place in Nanking, Manila, and
15 throughout the vast reaches of the Pacific.

16 The only testimony, then, is that of a man
17 who is naturally biased in favor of the country in
18 which he is making his living, and against the country
19 whose actions interfered with the smooth running of
20 his business operations.

21 Now let us examine what the defense witnesses
22 had to say about Hankow, KIKUKAWA, a company commander
23 who "led the vanguard entering the city" (21583),
24 described the preparations so that there would be
25 perfect order in the city when it was captured (21584)

1 and states (21585) "On the occasion of the capture of
2 Hankow there were orders from division headquarters
3 that all troops maintain strict military discipline
4 and to punish severely anyone taking an independent
5 action. The occupation in Hankow was carried out in
6 a truly exemplary manner. . ." There was no cross-
7 examination of this witness.

8 Next witness YOSHIKAWA was during the Hankow
9 campaign "in charge of the rear staff members of the
10 Sixth Division" (21587). He states (21588): "Since
11 a strict order on military discipline was previously
12 issued by HATA, the Commander, it was printed on leaf-
13 lets and distributed among the troops. This was
14 written on the troops' attitude toward the Chinese
15 residents, as well as on what precautions the troops
16 should take within the city. It warned the troops to
17 strictly observe military discipline and to prevent
18 any disorders in the city. Thus we were to enter
19 Hankow with every precaution." And (21589): "The
20 above being the situation, it is inconceivable that
21 the Japanese Army could have committed assaults, loot-
22 ing, rapes, and other brutal acts. I have never seen
23 such acts, never heard of such rumors, and never re-
24 ceived any reports of such atrocities."
25

And, again, the prosecution did not "wish to

cross-examine."

1 Next witness, YOSHIBASHI, a captain on the
2 staff of the Second Army at Hankow (21592). He states
3 (21595): "And I made sure our troops entered Hankow
4 peacefully without carrying out any hostile actions
5 and that no trouble such as loot, violence, or blood-
6 shed occurred on the part of our soldiers. When I
7 came to Hankow, the city was, needless to say, in a
8 peaceful state and not a single shot was heard.
9

10 "when our entry took place, only a minor
11 unit short of a regiment, which was selected from
12 among the Sixth Division was admitted into the city
13 area for purposes of defense, by order of the army
14 commander and the rest were all prohibited from enter-
15 ing within ten kilometers of Hankow."

16 He continues (21594): "Our army commander
17 had issued very strict orders concerning military
18 discipline." Also, "Entering Hankow on the afternoon
19 of the 29th, I walked about every quarter, but I never
20 sighted any corpses."

21 Next showing how careful HATA was to keep
22 only small forces in the city, and thus avoid any
23 unnecessary friction, he states (21595): "When the
24 guarding unit of the 13th Division were ordered on
25 November 3 to be quartered in dirty buildings in the

1 outskirts of Hankow, because our troops were banned,
2 from entering the city, an adjutant of the corps came
3 along and stormed at me in excitement: 'Such treat-
4 ment is an insult to the army.' However, I could not
5 allow them to enter the city on account of the order."

6 And he concludes with (21596): "At any rate,
7 the most close precaution and strict supervisions
8 were exercised, to prevent our soldiers from committing
9 any outrageous acts. Therefore, I affirm here that
10 such scandals as murder and rape of the Chinese people
11 never occurred in Hankow."

12 And, again, if the Tribunal please, the
13 prosecution did "not wish to cross-examine."

14 Dorrance had stated that the river, while he
15 was aboard the gunboat, didn't have many other ships.
16 However, YOSHIBASHI tells us (21594): "... but all
17 of them were prohibited from landing and the river
18 was crowded with our ships filled with soldiers."
19 "We wonder how good the powers of observation, and how
20 credible the testimony of Dorrance, with respect to
21 any of these matters, can be.
22

23 "We next present the witness OKKI, a war
24 correspondent at Hankow (21601). He states (21603)
25 while traveling in the city: "No dead were seen along
the way" and (21604): "However, on October 26, the

1 river swarmed with vessels," and (21605): "I swear
2 that the rumor that Japanese soldiers slaughtered
3 Chinese war prisoners and threw them into the river
4 is entirely groundless. Actually, it was so calm on
5 October 26 and 27 that not even the report of a gun
6 was heard."

7 F And again the prosecution did not desire to
8 cross-examine this witness. There had been no battle
9 for the city of Hankow. Skirmishes had taken part in
10 the cities before Hankow, and the Chinese forces had
11 withdrawn, and the entry into Hankow was a peaceful
12 march into the city.

13 The next witness was OGATA, a war correspondent
14 and he reached Hankow 26 October (21608). He states:
15 "At that time, the Hanshui River, a tributary of the
16 Yangtze, was so crowded with vessels of all sizes,
17 that it was impossible for us to come directly along-
18 side the bank. We, consequently, had to walk across
19 a number of ships to go ashore." And (21609): "On
20 October 28, I again went from Wuchang to Hankow. At
21 that time a great number of vessels were already at
22 anchor in the river, so that upon landing, I could
23 not go directly ashore, but had to walk across 30 or
24 40 vessels in order to reach the pier."
25

Later, on the same page, ". . . the streets

1 were quite as tranquil as in peacetime." And again,
2 if the Tribunal please, the prosecution did not desire
3 to cross-examine.

4 The next witness was IKDEA, a colonel at
5 Hankow. He states (21612): "First I landed at Anking
6 and assumed the responsibility of supplying the Second
7 Army, then by the order of General HATA, Commander of
8 the Japanese army in Central China, I left Anking for
9 Chinkiang where I made liaison with headquarters of
10 the above army and received detailed instructions
11 regarding the actual measures to be taken to protect
12 foreign rights and persons and property of the Chinese
13 at Hankow during the coming attack on that city."

14 After relating the efforts made to prevent
15 the occurrence of incidents, he states (21613):
16 "Accordingly, we became very popular with the people.
17 The Mayor of Hankow, the President of the Peace (Asso-
18 ciation, and other persons representing the people
19 came to me to express their gratitude."
20

21 And (21614): "Anyhow I heard not a single
22 gun shot throughout my trip to Hankow." "Only a small
23 number of garrison troops were stationed in the city."

24 "When I had the chance to see General HATA,
25 the Commander in Chief of the Central China Expedi-
tionary Forces, he told me earnestly to be cautious and

1 discreet in action so as to prevent any possible
2 complication in matters concerning protection of the
3 people and foreign affairs." And, again, the prosecu-
4 tion did not desire to cross-examine the witness.

5 The next witness was MIYAZAKI, staff officer
6 of the 11th Army. Speaking of HATA's actions with
7 reference to the Wuhan Area, including Hankow, he
8 states (21619): "Commander HATA had given deep
9 consideration regarding the actions of military per-
10 sonnel required for the capture of Wuhan and particu-
11 larly with reference to the residents in general
12 buildings, installations, etc., outside the category
13 of military objectives and ordered that they were not
14 damaged or destroyed. One example of this is at the
15 beginning of October of the same year, Commander HATA
16 issued orders to his subordinate commanding officers
17 prescribed summary 'Restricted Acts' in the capture of
18 Wuhan, together with a map minutely indicating rights
19 and interests of foreign nationals as well as impor-
20 tant Chinese political and military installations. He
21 took scrupulous steps to prevent violation of Inter-
22 national Law and to prevent occupation or destruction
23 of installations other than military." And, again,
24 the prosecution did not desire to cross-examine.
25

Next, we have the witness MORIOKA, who was

1 attached to headquarters of the Central China Expe-
2 ditionary Army, and who arrived at Hankow on the 28th
3 of October (21625): "Not a Japanese soldier was to
4 be seen except those of the headquarters unit of the
5 Japanese military police stationed in the Ssuning Bank,
6 because the Japanese soldiers were not permitted to
7 enter the city; but were quartered on the outskirts
8 of the city." He was billeted aboard a Japanese ship
9 docked at Hankow. He says (21626): "Never once did
10 I hear the report of a gun. Nor did I see a murder
11 committed within the vicinity of the wharf. The
12 customs house nearby the wharf was used as the office
13 of the transport headquarters, from the window of
14 which we had an unobstructed view of the vicinity."
15 And, again, as with all our witnesses who had gone
16 on before, the prosecution did not desire to cross-
17 examine.

18
19 Our next witness was MIYAGI, staff officer of
20 the Sixth Division and "among those who first entered
21 the city limits of Hankow" (21642). He states (21644):
22 "Furthermore, at the time of entry, no battle took
23 place and not a shot was fired. The troops were
24 composed and orderly; no air to kill prevailed and
25 the entry was accomplished very tranquilly. As
Commander IATA strictly maintained military discipline

1 and morals, we strictly observed his orders even before
2 at the entrance of the cities such foreigners as Ger-
3 mans, French, and Italians came to meet us. In order
4 to avoid trouble, we did not go through the British
5 concession and entered the city by another way under
6 the guidance of a French missionary. Accordingly,
7 there was no trouble whatsoever and we even took up
8 our lodgings in accordance with these people's in-
9 structions." (21645): "As I mentioned above, the
10 Japanese forces tranquilly entered the fortress in
11 good order and it is not possible that such cruelties
12 as plunder, rape, killing and wounding could have been
13 done after this entry. Accordingly, I did not ever
14 see even one corpse or the like inside the city."
15 "In the occupation of Hankow the navy took charge of
16 occupying the riverside area, the Japanese, French,
17 and British concession area, and the army took over
18 the airfield and the western area of Hankow."
19

20 So that, even if Dorrance is to be believed
21 in his statements that atrocities took place at the
22 wharf, these atrocities were committed by naval forces,
23 not by army forces under NATA.

24 AKAGI next states (21645): "At this time
25 more than 1500 or 1600 Chinese ships having a full
load of Chinese were sailing all over the Yangtze-kiang

with identification marks of neutral and foreign countries."

KAWABE, Chief of Staff to IATA during the Hankow operation stated (21701): "As we gave such strict order and instructions and took every precaution with minute care we believe there was not a single case of violation of military discipline in Hankow, such as massacre, violence, plunder, etc., nor did we receive any report or hear of them. I read in the papers that someone testified to the measure in Hankow, and I am astounded at such inconceivable testimony."

After fruitless cross-questioning, the record shows the following:

"Mr. Sutton: These questions are based upon the testimony of Derrance which appears at pages 3392.- 3396 of the transcript of proceedings.

"The President: We were told that this morning and we were also told that was the only testimony."

and with that we cease adducing further evidence on Hankow. This, then, is the defense evidence on the alleged atrocities of Hankow and every bit of it went unchallenged by the prosecution. The testimony gives the lie direct to the statement of

1 Dorrance that the Yangtze was not filled with ships
2 of all types. The evidence is unequivocal on the part
3 of war correspondents and officers who took part in
4 the campaign that there were no atrocities of any
5 nature whatsoever in Hankow. There had been no battle
6 for the city, there had been just a peaceful occupation.
7 Only a small unit, less than a regiment, had been al-
8 lowed to enter the city. The evidence shows that
9 HATA had taken every possible precaution to forestall
10 any untoward incidents or occurrences. We cannot help
11 but again stress to the Tribunal the extraordinary
12 fact that from one of the largest and most cosmopolitan
13 cities in China, the prosecution could not produce even
14 one witness, or the affidavit of a witness or any other
15 document to support the testimony of Dorrance with
16 reference to Hankow. The conclusion is inescapable, in
17 view of the fact that the prosecution so heavily
18 documented its Manila and Nanking phases, that, had
19 any atrocities really taken place, they would have been
20 able to get evidence from somewhere to support the
21 count on Hankow.

23 And, finally, and very important, we respect-
24 fully submit, is the fact that even in rebuttal, when
25 the prosecution tried desperately to plug the many
holes in its case, it could not, and did not, offer

1 any additional evidence on Hankow either to support
2 the testimony of Dorrance or to rebut our evidence
3 on Hankow.

4 We next turn our attention to counts 48, 49,
5 and 50, the cities of Changsha, Hongyang, Kweilin, and
6 Liuchow. Our first witness was MASUDA, a staff
7 officer of the 11th Army, who took part in the capture
8 of Kweilin. He states that Changsha and Hongyang had
9 been bombed and destroyed by American and Chinese
10 planes, and for that reason many Chinese civilians
11 were killed, and the Japanese Army did not even enter
12 Kweilin. He states (21633): "Since Commander-in-Chief
13 HATA had issued very strict orders concerning military
14 discipline and public morality beforehand, bringing
15 our attention even to the minutest details, we gave
16 our best efforts not to violate the commander's orders
17 and instructions. Accordingly, in the Siangtau and
18 Kweilin operations, our army absolutely did not commit
19 any misdeeds such as pillage, rape, and massacre of
20 the Chinese inhabitants."

22 This witness was not cross-examined.

23 We direct the Tribunal's attention to orders
24 for the establishment of "strict military discipline"
25 issued by HATA and distributed by his direction for
all units under his command (21736-8), 8 December 1942,

and again on July 6, 1944, stern injunctions not to
1 "loot, rape, or violate."

2 We next offered the affidavit of ARUGA, a
3 lance-corporal who took part in the Kweilin-Liuchow
4 operations. He states (21803):

5 "Before the opening of the Honan and
6 Kweilin-Liuchow operations, we soldiers who were
7 going to be engaged in them, were repeatedly and
8 strictly instructed by our seniors about the upkeep
9 of our discipline and morale toward the general
10 Chinese people. These instructions emphasized the
11 four items, 'Do not burn, kill, plunder, or violate.'
12 These warnings were faithfully followed by every one
13 of us soldiers.
14

15 "The soldiers of our unit warned one another
16 and strictly observed these four points. I never saw
17 our soldiers commit any criminal acts toward the
18 Chinese populace during the operations."

19 By agreement with the prosecution, this
20 witness was not brought in for cross-examination.

21 Our next witness was Lieutenant-General
22 YOKOYAMA who was Commander of the 11th Army Corps.
23 The duty of this corps was to "attack and occupy
24 Changsha, Hongyang, Kweilin, and Liuchow (21796).
25 Three divisions of this corps (21797), under YOKOYAMA,

1 attacked Changsha. He states: "When the city was
2 later occupied, the Japanese troops conducted them-
3 selves so well, that "some 6000 people who had taken
4 refuge, returned before long." They even supplied
5 food to the people (21798). The General next
6 describes how his corps took Kienyang (21798). Again
7 he used three divisions and, as before, he followed
8 HATA's order on strict discipline. Next the General
9 takes up the Kweilin operation. This time he employed
10 four divisions (21799). And finally he says: "I
11 ordered two divisions to attack Liuchow simultaneously
12 with the attack on Kweilin. The city was occupied
13 easily on the 10th of November."

14 "In this operation, the 23rd Army Corps
15 under the command of Lieutenant General TANAKA in
16 Kwantung cooperated with us." In speaking of all these
17 operations, he says (21800): "I strictly ordered my
18 officers and men to observe the fundamental rules of
19 'do not commit crimes,' 'do not commit plunder,'
20 'do not burn houses,' and 'do not kill.'" Later on
21 he states: "Upon receipt of instructions upon several
22 occasions from Supreme Commander HATA concerning
23 principle of 'love the people,' I did everything in
24 my power to see to it that the said principle be
25 observed faithfully. For this purpose I issued

1 instructions several times to my officers and men in
2 writing, or personally gave them to division commanders
3 and chiefs of staff under my command at their meetings."
4 The prosecution did not desire to cross-examine this
5 witness.

6 "We need go no further with reference to these
7 four cities, which were captured by the forces of
8 Lieutenant-General YOKOYAMA between June and November,
9 1944, to show that everything that could be done by
10 HATA to avoid atrocities was done by him. The evidence
11 of YOKOYAMA makes it pellucid that HATA was not present
12 at these operations nor did he direct them. As
13 Commanding General of all Japanese Forces in China,
14 he remained in his headquarters in central China and
15 gave strict orders about the enforcement of discipline.
16 There is no evidence that reports of any atrocities
17 ever reached him and the prosecution didn't even try
18 to cross-examine our witnesses on this point. Nowhere
19 in all the prosecution evidence of alleged atrocities
20 in the taking of these four cities between June and
21 November 1944 is there any allegation by the prosecu-
22 tion that the alleged atrocities were so extensive
23 that they could not have failed but to reach HATA.
24 The prosecution did make such allegations as to the
25 army commanders and the government officials in Tokyo

1 with reference to Nanking. Nowhere is there an
2 allegation that they were so prolonged that HATA must
3 have heard of, or known of them. Nowhere, we respect-
4 fully submit, is there any knowledge of these atroc-
5 ities imputed to HATA, and absolutely at no time has
6 the prosecution introduced any evidence to show that
7 HATA failed to take precautions to avoid atrocities.
8 We have shown that he did take precautions and did
9 give orders to avoid atrocities. In all wars there
10 are, inevitably, undesirable incidents by the troops.
11 There may have been some here, but how can the Command-
12 ing General, with forces scattered over hundreds of
13 thousands of square miles, be held personally responsi-
14 ble for the conduct of these troops, if it is not shown
15 that he ordered them, authorized them or permitted
16 them to commit atrocities? Not once, during the two
17 years of this trial, has the prosecution shown that
18 reports were made to HATA of those atrocities, or even
19 that he had heard of them. Not once has it been shown
20 that HATA failed or refused to take proper precaution.
21 In Yokohama today, as well as in China, and elsewhere
22 by the victorious allied powers, trials are being held
23 for those who were in direct command of the troops in
24 the field and who knew about the atrocities perpetrated
25 by their men, or they authorized, permitted, and in

1 many cases even ordered the perpetration of such
2 atrocities. We have no such case here.

3 All the above evidence quoted shows HATA
4 took every possible precaution. We repeat again, at
5 no time is there one shred of evidence offered by the
6 prosecution that HATA knew about those atrocities,
7 that they ever came to his attention, either by
8 official report or by rumor. Nowhere is there a
9 scrap of evidence that they were so intensive or
10 prolonged that they must have come to his attention and
11 that he therefore must have known of them somehow.

12 HATA was relieved in November of 1944 when the
13 last of these attacks, namely, Kweilin and Liuchow, were
14 alleged to have taken place. The earliest, Changsha,
15 took place 18 June 1944. HATA had assumed command
16 1 March 1941. Therefore, but for two months, he was
17 in command that entire year. During all of 1941, there
18 is no count alleging atrocities. During all 1942,
19 there is no count alleging atrocities. During all
20 1945 there is no count alleging atrocities, and, during
21 1944 it is only in the second half of the year that
22 we find counts alleging atrocities. Here, then, in
23 one of the most bitter wars in history, where there
24 were Nankings and Manilas and the various atrocities
25 alleged by the prosecution throughout the length and

1 breadth of the Pacific as well as in the prisoner
2 of war camps throughout Japan, we find that for
3 almost three and a half consecutive years of HATA's
4 rule as Commander in China, no counts are offered
5 alleging atrocities.
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1 We respectfully submit that this, above all,
2 speaks most eloquently as to HATA's role as a commanding
3 general. If it had been true that he authorized,
4 ordered, and permitted his troops to commit atrocities,
5 then surely with millions of Japanese troops at his
6 command scattered throughout China, there would have
7 been one count for at least every single year of his
8 command if not for every single month. This complete
9 absence of counts for three and a half years shows
10 that HATA was, as we contend, a strict disciplinarian
11 and kept his troops under control at all times, and
12 did not ever order, authorize, or permit them to
13 commit atrocities.

14 If HATA is to be held responsible, even
15 granting for the sake of argument, that Hankow, Changsha,
16 Hongyang, Kewilin and Linchow took place, then no
17 single commander in any army belonging to any country,
18 including my own, can ever avoid being held similarly
19 responsible for even in the most advanced countries
20 represented here by the allies, incidents which are
21 here called atrocities, take place. Even in this
22 allied occupation of Japan which is conceded to be
23 the most successful occupation in all history, if one
24 were to pick up our own English-language newspapers
25 and piece together the reports of incidents by troops,

1 he could make out a count against General MacArthur
2 and we, who are part of this occupation know that such
3 a count would be extremely ridiculous for while General
4 MacArthur is in command of the entire occupation, he
5 is not in command of the troops themselves. Other
6 generals command the troops and have the responsibility
7 and duty for the maintenance of discipline.

8 General HATA, in command of the entire China
9 theatre, was not in actual command of troops. Other
10 generals, as for instance YOKEYAMA, were in command
11 of the troops and theirs was the responsibility for
12 discipline. With respect to army chain of command and
13 the responsibilities of each level in that chain of
14 command, we offered a series of documents promulgated
15 by Japanese army headquarters in 1940 to help the
16 Tribunal, as we thought, understand what were the
17 respective responsibilities in the Japanese Army of
18 General HATA as supreme commander in China and his
19 subordinates who were in actual command of troops
20 in the field. Mr. Freeman, in introducing these
21 documents, stated "the defense contends that this
22 line of command is of the essence to place responsibility
23 if such acts were committed". And the President, in
24 rejecting these documents on behalf of the Tribunal,
25 stated "But we know that there are chains of command

1 and responsibility". We therefore rest with the
2 Tribunal's knowledge of the chains of command and
3 of the levels of responsibility and are certain it
4 will agree with us that HATA was not responsible. (p.21813)

5 During the general phase of the defense
6 case, the case of the Doolittle Fliers came up for the
7 first time. General SAWADA, Commander of the Thirteenth
8 Army in Shanghai, which captured, tried, and executed
9 the Doolittle fliers, was cross-examined by Mr.
10 Tavenner (page 27,450). This cross-examination on
11 this subject took the defense completely by surprise,
12 as there had been no hint during the prosecution's
13 case in chief that HATA was in any wise connected
14 with the trial and execution of the Doolittle fliers.
15 Before proceeding with the defense evidence with
16 reference to this matter, we will review pertinent
17 portions from Mr. Tavenner's cross-examination of
18 General SAWADA (page 27,451):

19 "Q Did you discuss the matter of the trial
20 of the Doolittle fliers with the accused HATA?

21 "A As I was absent from my post, prior and
22 at the time of the trial, I had no discussion whatsoever
23 with the commander in chief."

24 (page 27,452):

25 "Q As a matter of fact, did you not ask

1 General HATA before the trials, -- didn't you say to
2 him that you were waiting for the receipt of the orders
3 to try the Doolittle fliers?

4 "A No such thing happened prior to the trial.

5 "Q Did not General HATA say to you that
6 he was also waiting for orders from Tokyo to try the
7 Doolittle fliers?"

8 And there, if the Tribunal please, we have
9 in the prosecution's own question on cross-examination
10 an acknowledgment by the prosecution that the trial
11 and execution were ordered and handled by Tokyo, and
12 that HATA's general headquarters in Nanking were the
13 normal regular Japanese army channels through which
14 orders from Tokyo GHQ to various Japanese army units
15 in China were forwarded. General HATA was Commanding
16 General of all Japanese armies in China with his GHQ
17 in Nanking. It needs no elaboration here, for the
18 members of an International Military Tribunal must
19 know it, that all orders emanating from the highest
20 command in an army and directed to a subordinate unit
21 must pass through the chain of command until they
22 reach the headquarters of the appropriate lower echelon
23 unit. In this case, we have Imperial General Headquarters
24 in Tokyo, the highest authority in the Japanese Army,
25 commanded by General SUGIYAMA.

1 In the China theatre we have General HATA
2 as Commanding General of that theatre of operations,
3 with his headquarters in Nanking. In the vast country
4 of China there were various Japanese Armies, each
5 with its own headquarters, and, under these armies
6 there were corps and their subordinate units. If
7 any of the armies or subordinate units wished to
8 communicate with Tokyo, they would have to route their
9 messages through GHQ in Nanking to Tokyo. Similarly,
10 if the Supreme Command in Tokyo wished to communicate
11 with any unit in China, it sent its message for that
12 unit to GHQ in Nanking which then forwarded the message
13 to the appropriate unit.

14 With this as a background, we will proceed
15 to analyze the evidence offered by both sides and we
16 respectfully submit that the Tribunal will see that
17 at no time was General HATA the originating or initiating
18 authority in this matter but his only connection with
19 the matter was that his GHQ in Nanking was in the direct
20 chain of command through which all messages between
21 Tokyo and Shanghai Headquarters of the Thirteenth Army
22 had to pass.

24 We will begin then with General SAWADA's
25 answer to Mr. Tavenner's above quoted questions:

"A No, that he was waiting for the results

1 of the review of the Shanghai trial that was to take
2 place in Tokyo."

3 SAWADA testified that the orders to the
4 Thirteenth Army to hold the Doolittle Trial had come
5 from HATA, the Commander in Chief of the Japanese
6 Armies in China. Mr. Tavenner then asked (page 27,454):

7 "Q Now I would like you to fix a little
8 more definitely the time of your conference with the
9 accused HATA and what it related to.

10 "A I think it was around the 20th of September,
11 when I returned from the front-line after commanding
12 operations. I went to General Headquarters to make
13 a report. And at that time, among other things, I
14 made a report on the trial of the Doolittle Fliers.
15 At that time I told the Commander in Chief, General
16 HATA, that the sentence seemed to have been very heavy.
17 But, inasmuch as the results of the trial had been
18 reported to Tokyo, there was nothing else that we could
19 do, except to wait the results of the review which
20 was being conducted in Tokyo. On that same occasion
21 General HATA also said that inasmuch as the case was
22 being reviewed in Tokyo, there was nothing that could
23 be done except to wait."
24

25 Here, then, on the prosecution's own cross-
examination, we have evidence that Tokyo was reviewing

1 the case, and that HATA had said "there was nothing
2 that could be done except to wait". This is not evidence
3 offered by the defense, and therefore open to prosecution
4 comment that it is untrue or manufactured or thought
5 up now for purposes of trial by counsel, but the
6 prosecution's own evidence showing definitely that
7 HATA had no authority to act on his own and that
8 the decision was being made in Tokyo.

9 Cross-examination of this witness then was
10 continued by counsel for HATA and this testimony was
11 elicited (p. 27,457):

12 "A I received my orders directly from the
13 Commander in Chief, but I have heard that the Commander
14 in Chief received his orders direct from Tokyo.

15 "Q Where did you hear that?

16 "A From General HATA.

17 "Q Have you ever since that time learned
18 that General HATA did receive orders from Tokyo to
19 hold this trial?

20 "A Yes.

21 "Q From where?

22 "A From General HATA.

23 "Q Did you hear it from any other source
24 at any time?

25 "A Yes, I heard that from General TOJO after

1 I entered Omori Camp. That was much later.

2 "Q Do you know when that was? Can you
3 p? ce that?

4 "A That was in October, the year before
5 last -- November."

6 The Tribunal then asked the following questions
7 and received the following answers (p. 27,458):

8 "Q Were the judges in the case of the
9 Doolittle fliers obliged to sentence or at liberty
10 to acquit?

11 "A The judges were at liberty to conduct
12 the trial on the basis of the law.

13 "Q What was the law?

14 "A Military laws promulgated by the China
15 Expeditionary Forces.

16 "Q Did that permit of an acquittal?

17 "A No."

18 We respectfully submit that General SAWADA
19 is not the proper person to interpret laws and, even
20 if he had answered "yes" to the Tribunal's question,
21 that would still not be binding on the Tribunal, and
22 it would still be up to the Tribunal to determine
23 whether or not the laws permit of an acquittal. The
24 law referred to was prosecution exhibit 1991 (p. 14,662)
25 dated August 13, 1942, issued by the Expeditionary

1 Forces in China. It was promulgated after receipt
2 by HATA from the Vice-Minister of War in Tokyo of an
3 order directed to each "chief of staff stationed in
4 Japan and outside Japan" on the "treatment of enemy
5 air crew members" and dated 28 July 1942 (pros. ex.
6 1192) stating the decision of Tokyo to try by court-
7 martial "enemy air crew members who entered our
8 jurisdiction with the object of raiding Japanese
9 territory".

10 That HATA's headquarters promulgated its
11 law after receipt of these orders from Tokyo is borne
12 out by the next question and answer by SAWADA (p. 27,459):

13 "Q When the China Expeditionary Forces
14 promulgated these laws, do you know whether or not
15 orders had been received from Tokyo for the promulgation
16 of these laws?

17 "A Although I heard of this later, the draft
18 came from Tokyo."

19 Continuing, we learn that orders to the
20 Thirteenth Army from Tokyo would have to go through
21 HATA and be forwarded by his headquarters (p. 27,465):

22 "Q General SAWADA, if orders had come from
23 Tokyo, ordering the trial of the Doolittle fliers,
24 before they could reach your headquarters they would
25 have to go through the headquarters of General HATA

1 as Commander in Chief of the armies in China. Isn't
2 that correct?

3 "A Yes."

4 And showing that the Shanghai court's decision
5 would have to go through HATA's headquarters on its
6 way to Tokyo:

7 "Q And when a decision was announced by
8 the court, that decision had to be forwarded to Tokyo
9 again through General HATA's office because he was
10 Commander in Chief of the forces in China. Isn't that
11 correct?

12 "A That is so, yes.

13 "Q And in Tokyo, after they saw the decision
14 and they decided to change it from eight deaths to
15 three deaths and five life sentences, again, in order
16 to reach your command, that order making that change
17 had to go through General HATA because he was Commander
18 in Chief of the Armies in China, isn't that correct?

19 "A Yes, that is so."

20 That the orders for the trial came from Tokyo
21 is conclusively established by an excerpt from General
22 TOJO's interrogation (Pros. ex. 1984-A, p. 14,604):

23 "Q Then the order of occurrences was as
24 follows: the raid, the capture of the fliers, the
25 order which you issued, the trial and the executions.

1 "A. Yes.

2 "Q And the order which you issued provided
3 for the trial and punishment.

4 "A. Yes."

5 On re-cross, Mr. Tavenner asked if General
6 HATA had the power to make recommendations reducing
7 "the death sentence to life imprisonment or other
8 type of sentence". (p. 27,467). SAWADA stated, "I
9 do not know about the authority of the Commander in
10 Chief " and Mr. Tavenner then asked (p. 27,468):

11 "Q And he made no request that you make a
12 recommendation; that is, the accused HATA did not?

13 "A. No."

14 HATA couldn't possibly ask SAWADA to make
15 a recommendation because, the first time SAWADA and
16 HATA met to discuss the trial, "already one month had
17 elapsed at the time I had returned from the front"
18 (p. 27,451) and "when I met General HATA the trial had
19 already been over" (p. 27,452). And as to why neither
20 HATA nor SAWADA had made recommendations about the
21 decision of the court, this question and answer follow
22 (p. 27,470):

23 "Q Is it the usual custom in the Japanese
24 Army for you or General HATA to make recommendations
25 in such cases to your superiors?

1 "A It was not a custom."

2 Now let us examine the defense testimony
3 with respect to the Doolittle trial. The testimony
4 of General MIYANO, a member of General HATA's staff
5 in China, testified that the fliers were captured
6 by the Eleventh and Thirteenth Armies in China "and
7 when this was reported the order was given by the
8 Chief of the General Staff in Tokyo to send those
9 fliers to Tokyo immediately" (p. 28,869). When they
10 were sent back from Tokyo, they were sent directly
11 to Shanghai. Orders were sent with the fliers as
12 follows (p. 28,870):

13 "A The order was in two parts. One part
14 stated that a new military law for the treatment of
15 fliers who raided Japanese areas had been created and
16 ordered us to post the new law in accordance with a
17 copy that was attached to the order. The second part
18 ordered that the fliers be tried by military court
19 in accordance with the new military law which was
20 contained in the first part of the order.

21 "Q When was the order notifying you of the
22 creation of the new military law received?

23 "A 28 July 1942."

24 MIYANO continues and states that HATA was
25 opposed to treating the fliers as war criminals, but,

instead, wished to treat them as prisoners of war.

1 Next MIYANO states (p. 28,872):

2 "A Since the China Expeditionary Force
3 Headquarters did not have any military court in its
4 organization, since Tokyo had sent the fliers directly
5 to Shanghai, it was decided that the trial, if it had
6 to be held, would be held by the 13th Army whose
7 headquarters were in Shanghai. Because General HATA
8 opposed the idea of trying the American fliers by a
9 military court, instead of ordering the 13th Army to
10 proceed with the trial, he ordered the 13th Army to
11 investigate whether or not the fliers would be tried
12 by military law or could be treated as prisoners of
13 war.
14

15 "Q Did General HATA ever himself, or your
16 headquarters, receive any answer from the 13th Army
17 saying that the evidence was not sufficient to hold
18 the trial?

19 "A No."
20
21
22
23
24
25

1 That the case was then taken out of HATA's
2 hands, that he no longer from this point on had any
3 authority in the matter, that the trial was handled
4 directly between 13th Army Headquarters in Shanghai and
5 Tokyo, and that HATA did not have the authority to inter-
6 cede to change the course of events, or even to make
7 clemency recommendations, is best told not by us, but
8 by the evidence introduced before the Tribunal by MIYANO
9 and TANAKA. We quote first from MIYANO's testimony:

10 "A When General HATA expressed his intention
11 of generous treatment of those fliers to Lieutenant
12 General USHIROGU, his Chief of Staff, Lieutenant General
13 USHIROGU on the same day wrote a letter to the Vice-
14 Chief of the General Staff in Tokyo, General TANABE,
15 stating the intentions of General HATA and asking the
16 intentions of the Tokyo Central Authorities. The letter
17 was forwarded to Tokyo by messenger on an airplane the
18 very same day.

19 "Q Then what happened?

20 "A As a result of the letter sent by Lieuten-
21 ant General USHIROGU to the Tokyo Central Authorities
22 stating the intentions of General HATA, Colonel ARISUE
23 came all the way from Tokyo as emissary from the Chief
24 of the General Staff and expressed the desires of the
25 Chief of the General Staff, which were: To carry out the

trial in a very strict manner, and that punishment must
1 be very strict. As a matter of fact, the Chief of the
2 General Staff was expecting the death sentence. Further,
3 it was the order of the Chief of the General Staff that
4 the decision of the trial be forwarded to Tokyo immedi-
5 ately for action by Tokyo. The execution of the
6 sentence should be stayed until the decision was for-
7 warded from Tokyo after action was taken in Tokyo on the
8 decision of the trial. Further, after execution of
9 sentence, no announcement was to be made by the China
10 Expeditionary Army Headquarters, but all announcements
11 relative to the trial, sentence and execution of
12 sentence would be made by Imperial Headquarters, in
13 Tokyo. In this connection, General HATA stated to
14 Colonel ARISUE that because of the seriousness and the
15 importance of the matter, he wanted the orders from
16 Tokyo in writing. Colonel ARISUE retorted that because
17 of the seriousness of the matter the Chief of the
18 General Staff had decided to forward the orders not in
19 writing but by his personal emissary, Colonel ARISUE him-
20 self, and that there was no more reliable way of convey-
21 ing those orders than by the use of high ranking officer
22 courier.
23
24

25 "Q After General HATA forwarded the orders of
Tokyo that the fliers should be tried, what further action

1 did he take with relation to the trial?

2 "A No further action.

3 "Q Did he appoint the members of the tri-
4 bunal?

5 "A No.

6 "Q Did he appoint the prosecutor?

7 "A No.

8 "Q Did he appoint the defense counsel?

9 "A No.

10 "Q Did he make any appointment for any
11 position with regard to the court or any of its members?

12 "A No, this was not within his province. The
13 trial was to be held by the 13th Army, which had its
14 headquarters in Shanghai, the place to which the fliers
15 had been delivered from Tokyo. With the arrival of
16 Colonel ARISUE with a complete set of orders from Tokyo
17 that they were to be tried by military court, which
18 military court did not exist in the Headquarters of the
19 China Expeditionary Force which was located in Nanking,
20 control of all matters in the trial was out of our hands.
21 As the Headquarters of the China Expeditionary Force,
22 we were now the channel through which all orders relative
23 to the trial would pass and would be forwarded on to the
24 13th Army in Shanghai.
25

"Q Did HATA make known to the 13th Army his

intention to treat the fliers generously?

1 "A. No, because he had already been told by
2 the emissary of the Chief of the General Staff what the
3 intentions and desires were of the Chief of the General
4 Staff. HATA as a subordinate could not make any recom-
5 mendations of his own. If no orders had been received
6 from Tokyo as to the intentions and desires of the
7 General Staff, then General HATA as the highest authority
8 of the Japanese Army in China would have been permitted
9 to express his desires to the 13th Army. But since he
10 had been told directly by the emissary of the High Com-
11 mand, Colonel ARISUE, what the Tokyo authorities desired,
12 he had to control his own desires as to their treatment
13 or the demands to be made for sentence. However,
14 General HATA still did not give up his hope of giving
15 the fliers a light sentence because there was still the
16 order to forward to Tokyo immediately the decision of the
17 trial. Then again, the execution of sentence was to be
18 stayed until the decision of Tokyo was made known. On
19 these two points General HATA thought Tokyo would consider
20 the matter carefully and might mitigate the sentence or
21 might do something different after their minute consider-
22 ation of the entire case, so General HATA put every ex-
23 pectation on the further decision of the Tokyo people.
24
25

"Q Why didn't General HATA, when he received

the decision from Shanghai and then forwarded it to
1 Tokyo as per instructions, make any recommendation to
2 Tokyo to treat these people generously?

3 "A Since it has been ordered that the final
4 decision would be made in Tokyo, General HATA could not
5 suggest nor was it permissible for General HATA to sug-
6 gest again and again to his superiors in Tokyo what they
7 should do or to offer his recommendations. His inten-
8 tions of treating the fliers in a generous manner had
9 already been communicated to Tokyo through his Chief of
10 Staff and that was the reason why Tokyo had dispatched
11 Colonel ARISUE as emissary of the General Staff direct
12 to HATA to notify him of the contrary intentions of the
13 Tokyo Central Authorities. General HATA had good reason
14 to expect, since he knew that his personal intentions were
15 known to the General Staff and since they had ordered
16 that execution of sentence be stayed until further order
17 should be given by Tokyo they would mitigate the sent-
18 ences. Indeed, he was correct in this because later the
19 decision came from Tokyo saving the lives of five of the
20 fliers.
21

22 "Q How had General HATA's intentions to treat
23 these fliers in a fair manner become known to Tokyo?
24

25 "A When General HATA had disclosed his inten-
tions to his Chief of Staff, Lieutenant General USHIROCU,

1 Lieutenant General USHIROGU had reported it to the Vice-
2 Chief of the General Staff in Tokyo and had asked the
3 intentions and desires of the General Staff. That is
4 how the intentions of General HATA became known to the
5 General Staff and as a result of this knowledge, Colonel
6 ARISUE was dispatched to Nanking to give the orders and
7 the desires of the Chief of the General Staff for the
8 conduct of the trial to General HATA.

9 "Q When the fliers were tried by military
10 court under the newly promulgated military law promul-
11 gated by Tokyo and ordered posted in China, what
12 decision was open to the court to make?

13 "A It could find the fliers guilty or it
14 could acquit them.

15 "Q At any time during the entire proceedings
16 was General HATA as Commander of the Japanese Armies in
17 China permitted or authorized to exercise any discretion
18 in the setting up of the tribunal, its members, recom-
19 mendation to them of a decision?

20 "A No. With the arrival of Colonel ARISUE,
21 the entire matter was handled directly in accordance with
22 orders from Tokyo and in the same manner as if the trial
23 had been held in Tokyo. The only difference was that
24 Tokyo had sent the fliers back to Shanghai and had ordered
25 the trial held there. Everything, including decision to

1 hold the trial, the law under which the trial was to be
2 held, the review of the sentence of the tribunal, the
3 time as to the execution of the sentence and even the
4 announcement of the trial and its sentence and the exe-
5 cution of the sentence were all handled by Tokyo. At
6 no time were we permitted or were we in any position to
7 alter or change any of those decisions or to offer our
8 own recommendations. From the very beginning after the
9 fliers were captured by the 11th Army and the 13th Army,
10 Tokyo assumed control of the entire matter. They were
11 ordered to Tokyo for questioning and examination and
12 then when that was finished the fliers were returned to
13 Shanghai and the order arrived that their trial should
14 be held in China."

15
16 That H.M.A. had no control over the situation,
17 or authority to act, is testified to as follows
18 (p. 28,882):

19 "A I only know that one day he told the com-
20 mander of the 13th Army, Lieutenant General SAWADA that,
21 'I do not know whether you like the sentence of the
22 tribunal or not, but that is a matter beyond my control.
23 I can do nothing about it.'"

24 SAWADA, as we have already quoted, stated on
25 cross-examination to Mr. Tavenner the same thing and Mr.
~~Tavenner stressed it when he asked (p. 27,468) in~~

speaking to HATA:

1 "Q You do recall that he said there was
2 'nothing for us to do,' that 'it would be reviewed in
3 Tokyo'?

4 "A Yes."

5 With reference to the torture of the Doolittle
6 fliers, in cross-examination by Mr. Sutton, MIYANO
7 stated (p. 28,888):
8

9 "A I will now answer. Let me reply to that
10 question. Matters of such a kind were completely out-
11 side the knowledge of the general headquarters at that
12 time, and I believe that General HATA also was unaware
13 of such incidents or instances, and I furthermore feel
14 that -- and it was not until now that he has ever heard
15 of that."

16 Later on we have this question and answer in
17 cross-examination by Mr. Sutton (p. 28,890):
18

19 "Q By whom was the order issued directing
20 that the fliers be tried?

21 "A The order was issued by the Chief of the
22 Army General Staff.

23 "Q You have stated that you have no means of
24 knowing how they were treated in Japan. Did you have
25 any means of knowing how they were treated in China under
the command of General HATA?

1 "A We had the means to know, but I do not
2 think we were able to be informed of all the circum-
3 stances and facts.

4 "Q Did you make any effort to ascertain the
5 true facts?

6 "A At that time, operations were in progress
7 in China and only officers who were assigned to take
8 charge of the investigation, handling, etc., of these
9 fliers, were connected with the affair, and General
10 Headquarters did not know all the details or particulars
11 which would enable me to speak of such details."

12 That Tokyo, and not HATA, ordered the trial of
13 the Doolittle fliers was brought out very nicely for
14 us by Mr. Sutton's cross-examination of MIYANO (p. 28893):

15 "MR. SUTTON: May the witness be shown exhibit
16 1992.

17 "Q Is that the order which you referred to
18 as having been received from Tokyo authorizing the trial
19 of these fliers by the China Expeditionary Forces?
20

21 "A No, this particular document here was
22 prepared by the war office establishing a regulation as
23 to the handling of the Doolittle fliers and is not con-
24 cerned with the question of placing these fliers on
25 trial before a military court. What I have been talking
about previously was an order sent by the Vice-Chief of

1 Staff in Tokyo in the name of the Chief of the Army
2 General Staff ordering the trial, which order was sent
3 by the General Staff Office in Tokyo to the China
4 Expeditionary Force.

5 "Q What is the date of the order which you
6 have in your hand, exhibit 1992?

7 "A July 28.

8 "MR. SUTTON: May the witness be shown exhibit
9 1993.

10 "Q Is this one of the orders to which you
11 referred?

12 "A Yes.

13 "Q And what is the date of the order of
14 exhibit 1993?

15 "A July 28."

16 Thus we can see from the prosecution's own
17 cross-examination of MIYANO and by its own exhibit
18 that HATA had received orders from Tokyo to try the
19 Doolittle fliers, and the law for their trial had been
20 promulgated in Tokyo. It was after HATA sent a letter
21 on 30 July (p. 28,893) that he did not wish to try the
22 fliers as war criminals, that Colonel ARISUE was sent to
23 China by the General Staff in Tokyo with orders that the
24 trial would be held, despite HATA's wishes.
25

THE PRESIDENT: This is a convenient break.

1 You are getting on to TANAKA's evidence.

2 We will adjourn until half past nine tomorrow
3 morning.

4 (Whereupon, at 1600, an adjourn-
5 ment was taken until Friday, 12 March 1948,
6 at 0930.)

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